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# THE CENTRAL PACIFIC RAILROAD COMPANY

IN EQUITABLE ACCOUNT WITH

## THE UNITED STATES,

GROWING OUT OF THE

ISSUE OF SUBSIDY BONDS IN AID OF CONSTRUCTION.

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*A REVIEW OF THE TESTIMONY AND EXHIBITS*

PRESENTED BEFORE THE

### PACIFIC RAILWAY COMMISSION,

APPOINTED ACCORDING TO THE

ACT OF CONGRESS, APPROVED MARCH 3d, 1887.

BY ROSCOE CONKLING AND

WILLIAM D. SHIPMAN,

*Of Counsel for the Central Pacific R. R. Co.*

New-York:

HENRY BESSEY, PRINTER,

No. 47 CEDAR STREET.

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*Central Pacific Railroad Company*

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# CONTENTS.

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	PAGE
I. The public policy that led to the passage of the Act of Congress, approved July 1, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes," . . . . .	5 to 19
II. Contract between the United States and the Central Pacific Railroad Company, formed by the passage of the Act of Congress of 1862, the acceptance of its terms and the manner of its performance, . . . . .	19 to 26
III. Change of Contract by the Act of Congress of 1864, . . . . .	27
IV. The difficulty of construction and the great cost of the Central Pacific Road, . . . . .	28 to 41
V. Observance by the Central Pacific of its obligations to the Government, . . . . .	41 to 54
VI. Dividends, . . . . .	54 to 66
VII. Cost of the War in Utah, . . . . .	66, 67
VIII. Contracts let to Charles Crocker & Co., and the Contract and Finance Company, for the construction of the Central Pacific Railroad from Sacramento to Promontory, . . . . .	67 to 72
IX. Contract and Finance Company, . . . . .	72 to 80

- X. The purchase and building of roads consolidated with  
the Central Pacific of California, . . . . . 81 to 86
- XI. Purchase of the stock of the California Pacific Rail-  
road, . . . . . 86, 87
- XII. Diverting traffic from aided to non-aided lines, . . . 88 to 95
- XIII. Influencing legislation, . . . . . 95 to 104
- XIV. Disastrous effects of the "Thurman Bill" on the indebt-  
edness of the Central Pacific to the Government, . . . 104 to 120
- XV. The indebtedness of the Central Pacific to the United  
States, . . . . . 120 to 134

TO THE COMMISSIONERS APPOINTED BY THE PRESIDENT  
OF THE UNITED STATES UNDER THE PROVISIONS OF THE  
ACT OF CONGRESS, ENTITLED "AN ACT AUTHORIZING  
AN INVESTIGATION OF THE BOOKS, ACCOUNTS AND  
METHODS OF RAILROADS WHICH HAVE RECEIVED AID  
FROM THE UNITED STATES, AND FOR OTHER PURPOSES."  
APPROVED MARCH 3, 1887.

The Central Pacific Railroad Company submit this statement,  
and ask that it may accompany your report to the President:

## I.

THE PUBLIC POLICY THAT LED TO THE PASSAGE OF THE ACT  
OF CONGRESS, APPROVED JULY 1, 1862, ENTITLED "AN ACT TO  
" AID IN THE CONSTRUCTION OF A RAILROAD AND TELEGRAPH LINE  
" FROM THE MISSOURI RIVER TO THE PACIFIC OCEAN, AND TO  
" SECURE TO THE GOVERNMENT THE USE OF THE SAME FOR  
" POSTAL, MILITARY AND OTHER PURPOSES."

The project of a road to connect the Mississippi with the  
Pacific Ocean was first brought into public notice by Mr. Asa  
Whitney, who, from 1844 to 1850, agitated the scheme in  
addresses to State Legislatures and popular meetings. His  
proposition was to construct a road by the sale of the public  
lands along its line, and he asked from Congress a free grant of  
alternate sections for a width of thirty miles on each side to be  
given to himself and his heirs and assigns for that purpose.

His design was to commence at Prairie du Chien, on the  
Mississippi, crossing the Rocky Mountains at South Pass, and  
fixing the principal Pacific terminus on Vancouver Sound, with a  
branch from some convenient point west of the mountains to San  
Francisco. Among the objects he desired to accomplish was, to  
make the route of Asiatic commerce to Europe through the  
United States.

To that end, in the spring of 1844 he embarked from China for New-York with the determination to devote his life to the work of establishing a means of cheap and easy communication across our continent between the European population on one side of us, and all Asia, with its seven hundred millions of people, on the other.

To him, undoubtedly, belongs the credit of having first formulated a practicable scheme for the construction of a trans-continental railway ; though, in 1836, John Plumbe, a Welshman by birth, a civil engineer by profession, called, at Dubuque, Iowa, the first public meeting for the purpose of agitating the subject of building a trans-continental railway.

In 1837 Dr. Hartley Carver published, in the *New-York Courier and Enquirer*, an article advocating the construction of a Pacific Railroad.

But it has been recently claimed by Mr. E. V. Smalley, in his "History of the Northern Pacific Railroad," that as early as 1834, (possibly 1833,) Dr. Samuel Bancroft Barlow, of Granville, Mass., advocated the construction of a railroad from New-York to the mouth of the Columbia River, by direct appropriations from the Treasury of the United States.

In the Senate of the United States, in the Session of 1842-43, in the consideration of the "Oregon question," Senator Servier held that not only lands should be granted to settlers, and forts built and garrisoned for their protection, but, if necessary, a railroad should be made from the Missouri to the Columbia, over which immigrants might be conveyed in two or three days.

Senator Linn spoke upon the facility with which travel and transportation might be effected across the continent *by means of ordinary roads* at present and by railroads hereafter.

Senator McDuffie opposed these projects for the encouragement of settlers, *and ridiculed the idea that steam* could ever be employed to facilitate communication across the continent between the Columbia countries and the States of the Union.

When Mr. Whitney began his active work in connection with the project, our Oregon possessions were all we controlled on the Pacific Coast, and the location of the western terminus was limited accordingly. Later during his efforts we were in possession of all the coast from the Straits of Fuca to San Diego.

In the fall of 1849 a Pacific Railroad Convention met at St. Louis, and was presided over by Stephen A. Douglas.

It condemned Whitney's project, although, at the second session of the 28th Congress, in the winter of 1844-45, Mr. Douglas reported favorably on a memorial in favor of a Pacific Railroad presented by Mr. Whitney.

It will be remembered that a trans-continental railroad was for many years earnestly advocated by Mr. Benton, of Missouri, both in his place in the Senate and in popular addresses:

The discovery, in 1847, of gold in California, and the consequent settlement of that country by a large emigration from the Atlantic and Western States, from Europe and Australia, which commenced in 1849, brought the matter more prominently before the Government and hastened its action.

In 1851 Senator Gwin gave notice in the Senate of the United States of a bill for the construction of a Pacific Railroad, and in 1852 Senator Douglas reported a bill on the same subject.

On May 1st, 1852, the Legislature of California passed "*An Act granting the right of way to the United States for railroad purposes.*" The preamble to the Act is as follows :

*Whereas*, The interests of this State, as well as those of the whole nation; require the immediate action of the Government of the United States for the construction of a national thoroughfare connecting the navigable waters of the Atlantic and Pacific Ocean, for the purposes of national safety in the event of war, and to promote the highest interests of the Republic.

In March, 1853, Congress made an appropriation of one hundred and fifty thousand dollars, to defray the expense of the necessary surveys ; and in that year six parties were organized and sent out by the War Department.

In 1854, Congress made two more appropriations of forty thousand dollars and one hundred and fifty thousand dollars respectively, for deficiencies, and for continuing the work ; and then three additional parties were organized.

The determination of the relative practicability of the several routes of railroad was entrusted by the Honorable Jefferson Davis, then Secretary of War, to Captain Humphreys, of the United States Army, who made an elaborate report, which is on file in the War Department.

(See Report of Jefferson Davis, Secretary of War, to Congress, February 27th, 1855.)

It will be seen in the review that is here presented, that the passage of the Act of 1862 was not forced from an unwilling Congress by the solicitation of the Union Pacific Railroad Company or the Central Pacific Railroad Company, or by any one on their behalf. It was not a measure conceived in any sudden emergency ; although, no doubt, its passage was hastened by the commencement of the civil war, the danger to our Pacific possessions, and the necessities of the nation; but the whole subject had been well considered for several years before that bill received the sanction of Congress, and the approval of President Lincoln.

The attention of Congress had been called to the necessity of aiding the construction of a trans-continental road, by messages from three Presidents, Pierce, Buchanan and Lincoln.

Both the Republican and Democratic Conventions adopted resolutions in their platforms of 1856, pledging the parties to aid in appropriate legislation. The Democratic party, at their National Convention, held at Charleston, South Carolina, April 23, 1860, adopted the following preamble and resolution :

WHEREAS, One of the greatest necessities of the age, in a political, commercial, postal and military point of view, is the speedy communication between the Pacific and Atlantic Oceans ; therefore,

*Be it Resolved*, That this party do hereby pledge themselves to use every means in their power to procure the passage of some bill, to the extent of the Constitutional authority of Congress, for the construction of a Pacific Railroad from the Missouri River to the Pacific Ocean, at the earliest practicable period.

On June 11th, 1860, the Convention at Chicago that nominated Abraham Lincoln for the Presidency

*Resolved*, That a railroad to the Pacific Ocean is imperatively demanded by the interests of the whole country. That the Federal Government ought to render immediate and efficient aid in its construction, and that preliminary thereto a daily overland mail should be promptly established.

Prior to 1860, the Legislatures of eighteen States had passed resolutions in favor of a railroad to the Pacific.

Apart from the question of preserving to the Union the Pacific Coast States and Territories; and extending to the people the protecting hand of the Government which had become necessary from the events occurring in the early history of the war, it was a matter of the highest statesmanship to furnish this means of communication between the Missouri River and the Pacific Ocean, and to open to civilization and settlement the country between such points.

Mr. Whitney's original plan was, that the United States should furnish aid to build from the Mississippi River to the Pacific ; but in the seven or eight years that had elapsed from the time that he had first called attention to the enterprise to the passage of the Act of 1862, private capital had been invested to furnish railroads between the Mississippi and the Missouri. When the Union Pacific Company commenced construction in the latter part of 1864, a railroad was in operation from Hannibal, in Missouri, to Saint Joseph, on the Missouri River, and by means of such road and by vessel from Saint Joseph to Omaha the Union Pacific received the material for the construction of its first one hundred miles. In 1867 the lines of the Chicago and North Western Company were completed to Council Bluffs. But beyond the Missouri, and through that territory which forms the State of Nebraska, there was a large amount of unoccupied land capable of the highest cultivation. It will not be forgotten that one-half of the territory of the United States is west of the Missouri, and that between that river and the Sacramento, a distance of 1,800 miles, there is not a single navigable stream. All this territory east of the Sierra Nevada Mountains was, before the laws aiding the Pacific Railroads, totally unimproved and uninhabited save by United States troops and Indians.

When the subject of the construction of a trans-continental railway was first proposed, the Mississippi River practically constituted our western frontier, and Texas was engaged in her war of independence. The matter had been broached in Congress before that State had come into the Union. When Mr. Douglas introduced his first bill for the construction of a railway, the war with Mexico had not begun. When the Mexican war was closed there was not a single mile of railroad west of the Mississippi ; and it was not until 1859 that the railroad system of the country

was connected with the Missouri River by the completion of the Hannibal and St. Joseph Railroad.

The most interesting history of the events preceding the construction of the Pacific Railroads is to be found in the "Report on Trans-continental Railways, 1883," made by Col. O. M. Poe, United States Engineer and Brevet Brigadier General, to General W. T. Sherman, and we are indebted to Col. Poe for many of the facts above stated.

Those who then controlled the legislation of the nation saw that it would add to the strength of the United States as an exporter of food to turn the lands of Nebraska into cornfields, and to bring into use such portions of the country between the Missouri River and the Sierra Nevada Mountains as were suitable for agricultural or grazing purposes: that they were but helping the destinies of the United States, that it might feed the manufacturing population of the Old World. They recognized the truism that the nation that has food to sell is the most independent and powerful. Having control of the bread and meat required by the populations of England, France and Germany, it could regulate the value of the manufactured goods it was compelled to purchase from those countries, and they recognized the authority of an eminent political economist, that money expended by a nation in the construction of works of public utility enrich the country.

It has been well and no doubt truthfully said, that if Rome had been able to produce the food necessary to feed her legions, the Cæsars would still be governing the world.

The late Lord Beaconsfield, when, as Mr. Disraeli, he became the leading statesman of England, saw great danger to the people of Great Britain from depending upon the United States for so large a portion of their food supply. He saw, also, the jeopardy to its Asiatic possessions from the continual failure of the rice crops in India, and he resolved to encourage it to become a producer and exporter of wheat. It was one of his quaint sayings, that England was an Asiatic instead of a European power. And so he brought his eminent abilities to determine whether England could not obtain its bread from Hindostan instead of America; whether its millions of subjects in Asia could not be guarded from the risks of famine in their de-

pendence on one article of food, for whose maturity a scant rainfall was insufficient, by adding another more easily and certainly produced, and containing elements that would improve the physique of the race, and so furnish to India an article that could be readily used in exchange in the place of her silver.

To this end he consulted with and obtained the experience of the Duke of Wellington, whose long residence in India peculiarly fitted him to advise, and from the information so obtained, the Government of England, of which the Earl of Derby was then the Premier, and Mr. Disraeli, Chancellor of the Exchequer, in conjunction with the aid and assistance derived from the house of Rothschild, conceived and carried into effect the construction of railroads to the higher altitudes in India, where wheat could be cultivated. And to accomplish the end in view the English Government guaranteed the interest at the rate of five per centum on \$200,000,000, the contemplated cost of the railways then designed.

However detrimental the result of Mr. Disraeli's plan has proved to the farmers of this country, it is gratifying to Englishmen to remember that he lived some years after it had come to its complete success; for we see by returns made to Parliament, that in 1877 and 1878, the exports of wheat from India to England were so large, as to materially reduce the demand on this country.

Our legislators were also anxious to carry out what in reality was the day dream of Mr. Benton, who said :

That he hoped he might live to see a train of cars thundering down the Eastern slope of the Rocky Mountains, bearing in transit to Europe the teas, the silks and spices of the Orient.

It may be added, that but for the construction of the Suez Canal, the vision of the Missouri Senator would have been realized.

There were other causes that induced Congress to pass the Act of 1862.

The first gun was fired on Sumter Friday, April 12, 1861, and the fort was evacuated Sunday, April 14, 1861.

The battle of Bull Run was fought July 21, 1861.

On November 8, 1861, the Commander of the United States Sloop San Jacinto arrested and took off the English Steamer

Trent, on the high seas, Messrs. Mason and Slidell, who were then the accredited ministers of the Confederate Government to the respective courts of England and France.

Immediately after the last date, the Asiatic Fleet of Great Britain found the Harbor of Victoria, Vancouver's Island, a favorite place of rendezvous, and the fleets of Russia then in the Pacific assembled at San Francisco, and the General commanding the United States troops stationed at Benecia, the Presidio, Alcatraz and Angel Island, in California, was superseded, his loyal intent to the Government being questioned.

It will be seen there were two forces that threatened the supremacy of the United States Government on the Pacific Coast; the danger of foreign invasion, and of civil commotion.

As was said by Mr. Campbell in the House of Representatives, on April 8, 1862 :

In a recent imminent peril of a collision with a naval and commercial rival, one that bears us no love, we ran the risk of losing, at least for a time, our golden possessions on the Pacific for want of proper land transportation.

And Mr. Stevens, of Pennsylvania, said :

In case of a war with a foreign maritime power, the travel by the Gulf and Isthmus of Panama would be impracticable. Any such European power could throw troops and supplies into California much quicker than we could by the present overland route. The enormous cost of supplying our army in Utah may teach us that the whole wealth of the nation would not enable us to supply a large army on the Pacific Coast. Our Western States must fall a prey to the enemy without a speedy way of transporting our troops.

It is but history to say, that if at this time we had become involved in a war with England, we could only have retained our possessions on the Pacific by the friendship and aid of Russia.

It was of the utmost importance to the Treasury and the people of the United States to retain the allegiance, trade and good will of the people of the Pacific, and especially of California.

In 1854 the gold shipped to New-York was \$46,289,000. This shipment fell off year by year until 1859, when it was \$39,831,000; in 1860, \$35,661,000; in 1861, \$34,486,000; in 1862, \$25,080,000.

Although the total shipment of gold from California in 1862 was \$49,376,000, all over \$25,080,000 was diverted from New-York by shipments from San Francisco direct to England, in

consequence of the increasing risks of transportation caused by Confederate cruisers, and the raising of insurance rates to five per cent. to cover war risks.

In December, 1862, the "Ariel," from New-York to Aspinwall, was captured by the Alabama and bonded. On her return, she did not bring the specie awaiting her at Aspinwall, which was of the value of about \$550,000, but it was forwarded to New-York by the United States gunboat "Connecticut."

All these causes led to the passage of the Act of 1862.

As evidencing the tone and temper of the nation, and of Congress, towards this work, and the necessity for the legislation then proposed, we quote briefly from the debates in the Senate.

We should say, in anticipation, that in 1860, General Samuel R. Curtis, then Chairman of the Pacific Railroad Committee in the House of Representatives, reported that the aggregate amount which was paid by the Government for the transportation of mails, military and naval stores from the Mississippi River to the Pacific Ocean reached more than six million dollars per annum.

In 1862 Mr. Campbell, of Pennsylvania, then Chairman of the House Committee on the Pacific Railroads, after having obtained from the War, Navy, Indian and Postal Departments the amounts which those Departments were paying for transportation across the continent, reported the sum aggregated more than \$7,300,000 per annum.

It was then anticipated by Congress that the amount of bonds to be issued for the main line and certain branches at the Missouri end would be about sixty-five million dollars, and that the interest would be about three million eight hundred thousand; and, as one of the Senators said, subtract three million eight hundred thousand from seven million five hundred thousand and you have a remainder of three million seven hundred thousand, which would go to make up a sinking fund for the repayment by this Company of the principal of the bonds, besides paying the actual interest on the bonds.

Why these anticipations were not fulfilled, we will hereafter notice.

But to return to the debate in the Senate. On the 17th of June, 1862, the bill being again under discussion, Mr. Wilson, of Massachusetts, made the following remarks :

I have little confidence in the estimates made by Senators or members of the House of Representatives as to the great profits which are to be made and the immense business to be done by this road. *I give no grudging vote in giving away either money or land. I would sink one hundred millions of dollars to build the road, and do it most cheerfully, and think I had done a great thing for my country if I could bring it about. What are seventy-five or a hundred millions in opening a railroad across the central regions of this continent, which will connect the people of the Pacific and the Atlantic and bind them together?*

And on the same day he used the following language :

*As to the security the United States takes on this road, I would not give the paper it is written on for the whole of it. I do not suppose it is ever to come back in any form except in doing on the road the business we need, carrying our mails and munitions of war. In my judgment we ought not to vote for the bill with the expectation or with the understanding that the money which we advance for this road is ever to come back into the Treasury of the United States. I vote for the bill with the expectation that all we get out of the road (and I think that is a great deal) will be the mail carrying and the carrying of munitions of war and such things as the Government needs, and I vote for it cheerfully with that view. I do not expect any of our money back. I believe no man can examine the subject and believe that it will come back in any other way than is provided for in this bill ; and that provision is for the carrying of the mails and doing certain other work for the Government.*

Mr. Wilson but spoke the sentiments of the leading Senators and Representatives who voted for that bill. The wishes of the people, the perils of the Government, the carrying out of its purposes in connecting the eastern and western sides of the continent, which it was supposed at that time private capital was utterly unable and unequal to accomplish, and the consequent facilities to the Government for the movement of the mails and munitions of war, and the pacification and control of the Indians, and the defence of our Pacific possessions, was a sufficient inducement, if all the aid granted to the Companies who were to co-operate with the Government in the building of the road, was never returned into the Treasury in any other form.

On the same subject, Mr. Clark, of New Hampshire, said:

The Senator from Massachusetts may be entirely right, that the Government may never receive back this money again ; and it may be that we make the loan for the purpose of receiving the services. But it will be well to

take a mortgage, to secure the building of the road through, and then to secure the performance of those services which we expect them to perform in the transmission of mails and munitions of war after the road is built. I think we had better adopt the amendment of the Committee. It will make it safer for the Government ; safer in this regard, that we shall have the road built, and have the service performed.

Further on in the same debate, Mr. Clark used the following language :

Whether I am right or not, I do not build the road because I think it is to be a paying road. I build it as a political necessity, to bind the country together and hold it together ; and I do not care whether it is to pay or not. Here is the money of the Government to build it with. I want to hold a portion of the money until we get through, and then let them have it all.

Mr. Ten Eyck, of New-Jersey, used the following language :

The great object of the Pacific Railroad Bill is to have a national means of communication across the Continent. That is the idea which the public have entertained for years past, and the only idea ; a great national measure to cement the Union, to bind with a belt of iron the Atlantic and Pacific.

\* \* \* \* \* This is the inducement which the old States have in doing what they believe will be for the benefit of the common country, to the prejudice of the Treasury, so to speak, yet, the general returns may be beneficial in the long run.

Mr. Collamer, of Vermont, said :

This bill carries the idea, and in this section provides for the repayment of the loan, as gentlemen call it. In a subsequent section it is provided that the payment shall be made in the carrying of the mail, supplies and military stores for the Government, at fair prices, and also five per cent. of the net proceeds or sums to be set apart for the Government. That is all the provision there is in the bill for repayment.

Mr. Latham, of California, in the course of the same debate, said :

The loan of the public credit at six per cent. for thirty years for sixty-five millions, with absolute security by lien, with stipulations by sinking fund from profits for the liquidation of the principal, official reports and other authoritative data, show that the average annual cost, even in times of peace, in transportation of troops, with munitions of war, subsistence and Quartermaster supplies, may be set down at seven million three hundred thousand dollars. The interest upon the credit loan of sixty-five millions will be

annually three million nine hundred thousand dollars, leaving a net excess of three million four hundred thousand dollars over the present cost, appealing with great force to the economy of the measure, and showing, beyond cavil or controversy, that the Government will not have a dime to pay on account of its credit, nor risk a dollar by authorizing the construction of this work.

Mr. McDougal, of California, said :

As I have had occasion before to remark, the Government is now paying over seven millions per annum for the services which this road is bound to perform. That is about one hundred per cent. more than the maximum interest upon the entire amount of bonds that will be issued by the United States when the road is completed. The Government is to-day on a peace establishment, without any war necessity, paying for the same services one hundred per cent. more than the entire interest on the amount of bonds called for by the bill. Besides that, it is provided that five per cent. of the net proceeds shall be paid over to the Federal Government every year. Now let me say, if this road is to be built, it is to be built not merely with the money advanced by the Government, but by money out of the pockets of private individuals. \* \* \* \* It is proposed that the Government shall advance sixty millions, or rather their bonds at thirty years, as the road is completed, in the course of a series of years ; that the interest at no time can be equal to the service to be rendered by the road as it progresses ; and that the Government really requires no service except a compliance on the part of the Company with the contract made. It was not intended that there should be a judgment of foreclosure and a sale of this road on a failure to pay. We wish it to be distinctly understood that the bill is not framed with the intention to have a foreclosure. \* \* \* \* In case they failed to perform their contract, that is another thing. That is a stipulation ; that is a forfeiture, in terms of law ; a very different thing from a foreclosure for the non-payment of bonds. The calculation can be simply made, that at the present amount of transportation over the road, supposing the Government did no more business, that that alone would pay the interest and the principal of the bonds in less than twenty years, making it a direct piece of economy if the Government had to pay for them all. However, I am not disposed to discuss this matter. I say it was not understood that the Government was to come in as a creditor and seize the road on the non-payment of interest. It is the business of the Government to pay the interest because we furnish the transportation.

Mr. Sargent, then a member of the House, in the course of the debate there on this question, used the following language :

When the road is fully completed and we are experiencing all the security and commercial advantages which it will afford, the annual interest will be less than four millions, and that sum will be but gradually reached year

after year. The War Department has paid out, on an average, five millions per year for the last five years, for transportation to the Pacific Coast, and the mails cost one million dollars more at their present reduced rates. The saving to the Government would be two millions a year on these items alone.

Hereafter we will point out that the failure to realize the anticipations of the Senators and Representatives who voted for this bill cannot be ascribed to these corporations. We say, with all due respect, that if the Government of the United States had performed its part of the contract, it would have "been fully reimbursed for the amount of interest it has paid," and have had a fund now in hand for the retirement of bonds loaned.

As illustrating the situation presented on the part of the Central Pacific, and although we shall have occasion again to comment upon the case of The United States against The Union Pacific Railroad Company, its inspiration, purposes, and the effect of its decision, we call attention to the language of Mr. Justice Davis, who then spoke for the Supreme Court of the United States, reported in 1 *Otto*, 91 *U. S.*, at page 79, (October, 1875,) and following. Any history of the Pacific Railroad would be incomplete without citing the language of this great jurist :

Many of the provisions in the original Act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed. The war of the Rebellion was in progress, and, owing to complications with England, the country had become alarmed for the safety of our Pacific possessions. The loss of them was feared, in case those complications should result in an open rupture ; but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every Government owes to its citizens. It is true the threatened danger was happily averted, but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country, and furnish a cheap and expeditious mode for the transportation of troops and supplies. If it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the performance of an imperative duty, could not justly withhold the aid necessary to build it ; and so strong and pervading was this opinion, that it is by no means certain that the people would not have justified Congress if it had departed from the then settled policy of the country regarding works of internal improvement, and charged the Government itself with the direct execution of the enterprise. This enterprise was

viewed as a national undertaking for national purposes ; and the public mind was directed to the end in view, rather than to the particular means of securing it. Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion, besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers, which was practically worthless without the facilities afforded by a railroad for the transportation of persons and property. With its construction, the agricultural and mineral resources of this territory could be developed, settlements made where settlements were possible, and thereby the wealth and power of the United States largely increased ; and there was also the pressing want, in time of peace even, of an improved and cheaper method for the transportation of the mails and of supplies for the army and the Indians. It was in the presence of these facts that Congress undertook to deal with the subject of this railroad. The difficulties in the way of building it were great, and by many intelligent persons considered insurmountable. \* \* \* \* Of necessity there were risks to be taken, in aiding with money or bonds an enterprise unparalleled in the history of any free people, the completion of which, if practicable at all, would require, as was supposed, twelve years ; but these risks were common to both parties. Congress was obliged to assume its share, and advance the bonds, or abandon the enterprise, for, clearly, the grant of lands, however valuable after the road was finished, could not be available as a resource for building it.

And as a matter of convenience for the argument, we cite at this time the language of Mr. Justice Miller, in delivering the opinion of the Supreme Court of the United States, in the case of the *United States vs. The Union Pacific Railroad Company et al.*, at the October term, 1878. (98 *U. S.* p. 619.)

There are many matters alleged in the bill in this case, and many points ably presented in argument which have received our careful attention, but of which we can take no special notice in this opinion. We have devoted so much space to the more important matters that we can only say that under the view which we take of the scope of the enabling statute, they furnish no ground for relief in this suit. The liberal manner in which the Government has aided this Company in money and land is much urged upon us as a reason why the rights of the United States should be liberally construed. This matter is fully considered in the opinion of the Court, already cited in the case of the *United States vs. The Union Pacific Railroad Company*, (91 *U. S.* 72,) in which it is shown that it was a wise liberality for which the Government has received all the advantages for which it bargained and more than it expected. In the feeble infancy of this child of its creation, when its life and usefulness were very uncertain, the Government, fully alive to its importance, did all that it could to strengthen, to support and to sustain it. Since it has grown to a vigorous manhood it may not have dis-

played the gratitude which so much care called for. If this be so, it is but another instance of the absence of human affections which is said to characterize all corporations. It must, however, be admitted that it has fulfilled the purpose of its creation and realized the hopes which were then cherished, and that the Government has found it a useful agent, enabling it to save vast sums of money in the transportation of troops, mails and supplies, and in the use of the telegraph. A Court of Justice is called on to inquire, not into the balance of benefits and favors on each side of this controversy, but into the rights of the parties as established by law, as found in their contracts, as recognized by the settled principles of equity, and to decide accordingly.

## II.

### CONTRACT BETWEEN THE UNITED STATES AND THE CENTRAL PACIFIC RAILROAD COMPANY, FORMED BY THE PASSAGE OF THE ACT OF CONGRESS OF 1862, THE ACCEPTANCE OF ITS TERMS, AND THE MANNER OF ITS PERFORMANCE.

By the passage of the Act of 1862, and the acceptance of its terms by the Central Pacific Railroad Company, a contract was created between it and the Government, by which the Company undertook to construct a railroad and telegraph line, from the Pacific Coast, at or near San Francisco, or the navigable waters of the Sacramento River to the eastern boundary of California, provided that the said Company should reach the boundary before it met the line of the Union Pacific ; the Union Pacific being authorized, with the consent of the State of California, to construct through California, until it met the track of the Central Pacific, and if the Central Pacific should first arrive at the boundary of said State, then it might continue the construction of its railroad and telegraph line eastward, to such point as it might connect with the Union Pacific.

In aid of such construction the United States agreed to donate every alternate section of public land designated by odd numbers, to the amount of five alternate sections per mile, on each side of said road on the line thereof, within ten miles of each side of the road not sold, reserved or otherwise disposed of ; the title of said land to be vested in the Company when it should have completed forty consecutive miles of railroad and telegraph ; and that on completion of said section, the Secretary of the Treasury should

issue to the Company bonds of the United States, payable thirty years after date, bearing six per cent. per annum interest, payable semi-annually, to the amount of sixteen of said bonds per mile, but from the Western base of the Sierra Nevada Mountains, [such point to be fixed by the President of the United States,] the bonds to be issued should be at the rate of \$48,000 per mile for one hundred and fifty miles eastwardly; and between the mountainous sections at the rate of \$32,000 per mile; the Central Pacific to complete fifty miles of said railroad and telegraph line within two years of filing their consent to the provisions of this Act, and fifty miles each year thereafter; the entire line between the Missouri River and the Sacramento to be completed so as to form a continuous line of railroad, and ready for use by the first day of July, 1876.

The Act provides that the issue of said bonds and delivery to the Company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and in consideration of which, said bonds may be issued.

That the grants of the said lands and bonds are made upon condition that said Company shall pay said bonds at maturity, and shall keep its said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line and transport mails, troops and munitions of war, supplies and public stores on said railroad for the Government whenever required to do so by any department thereof; and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid at fair and reasonable rates of compensation, not to exceed the amount paid by private parties for the same kind of service; and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid; and after said railroad is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall be annually applied in the payment thereof.

These are the express terms of the contract on the face of the agreement. But there was an implied, if not an express understanding between the contracting parties, as voiced in the various debates in both branches of Congress, that in ad-

dition to the five per cent. of the net earnings to be paid annually after the completion of the road, the Government would look only to the performance of that portion of the contract by which the Railroad Company undertook to do its telegraph business and transport its mails, troops and munitions of war, and public stores, for the repayment of the principal and interest of the bonds.

From those debates, and especially from such portions which we have heretofore referred to, it is evident that not a single vote was cast in favor of the passage of this Act with any expectation that the Government would receive from the Railroad Companies in re-imbursement one dollar in addition to the five per cent., and the services rendered in such transportation.

It will be remembered that Senator Wilson, of Massachusetts, said :

As to the security the United States takes in this road, I would not give the paper it is written on for the whole of it. I do not suppose it is ever to come back in any form except in doing on the road the business we need, carrying our mails and munitions of war. We ought not to vote for the bill with the expectation or with the understanding that the money which we advance is ever to come back into the Treasury of the United States. I vote for the bill with the expectation that all we get out of the road (and I think that is a good deal) will be the mail carrying and the carrying of munitions of war, and such things as the Government needs. I believe no man can examine the subject and believe it will come back in any other way than is provided for in this bill, and that provision is for the carrying of the mails and doing certain other work for the Government.

Mr. Howard, of Michigan, the Chairman of the Senate Committee on Pacific Railroads, who reported the bill of 1862, said :

When the road shall have been completed, assuming the bonds issued to be \$62,880,000, the maximum estimate and the entire interest will be but \$3,773,800 per annum. The present able Chairman of the House Committee took occasion to inquire directly of the Government the exact cost to the Government of the transportation provided for by this bill, and found it to be \$7,357,000, or about one hundred per cent. more than the full charge of interest against the Government when the road shall have been completed. I now call the attention of Senators to this consideration, or rather to this pregnant fact, not to be ignored or avoided, that the difference between the interest (\$3,773,800) and the present cost, (\$7,357,000,) with the five per cent. reserved to the Government by the bill, would necessarily *pay the Government bonds and interest years before* the Government bonds would mature.

Mr. Collamer said :

The bill carries the idea, and this section provides for the repayment of the loan, as gentlemen call it. In a subsequent section, *it is provided that the payment shall be made in the carrying of the mails, supplies and military stores for the Government at fair prices, and also five per cent. of the net proceeds or sums to be set apart for the Government.* THAT IS ALL THE PROVISION THERE IS IN THE BILL FOR REPAYMENT.

Mr. Wade said :

Sir, your money will not be lost. *In a pecuniary point of view, it will be a gain to this Government, to make these facilities for settling this wilderness.* It will strengthen us in a military point of view. It will strengthen the Union, which is more than all. It will do more for the country than we have done for any number of years past.

In the House of Representatives, Mr. Campbell said :

I have shown that the army and navy transportation and postal service to the Pacific Coast cost the Government annually \$7,357,781. Take then the annual interest from the annual expenditure, and we have left a sinking fund of \$3,465,701, a sum more than sufficient to extinguish the bonds before they become due, or what is the same thing in effect, saved to the Government by cheapening expenditure in that direction.

Mr. Phelps, of California, said :

The gentleman from Pennsylvania has shown us by authentic figures that the cost of transporting military and naval stores and the mails to the Pacific Coast amounts to seven millions per annum, and that of this sum an amount more than large enough to pay the interest on the bonds to be issued under this bill would be saved by the construction of this road.

Mr. Kelly said :

Can there be any question that our country can bear such an augmentation of its annual expenditure, or will it harm, if posterity, being blessed by this work, should, perchance, have to pay the principal of the credit invested.

Mr. Sargent said :

The bonds will be issued slowly, few at a time, as the work progresses. It will be probably two years before any bonds will be issued, for surveys have to be made. \* \* \* The whole amount of interest to be paid up to 1866 will be but \$168,000, and up to 1867, but \$504,000 ; and when the road is fully completed, and we are experiencing all the security and commercial

advantages which it will afford, the annual interest will be less than \$4,000,000. The War Department has paid out, on an average, \$5,000,000 per year for the past five years, for transportation to the Pacific Coast, and the mails cost \$1,000,000 more, at their present reduced rates. The saving of the Government would be two millions per year on these items alone.  
 \* \* \* \* \* The Mormon war cost millions to the Government—probably one-third the amount contemplated by this bill—and a very large proportion of that cost was in the item of transportation, and much of it on account of the necessary delay in military movements, without railroads over such distance. *That war never could have occurred, with a railroad across the continent.* With such a road you would avoid Indian wars, which cost millions to the Government, through the Territories traversed by it.

Mr. White, of Indiana, expressed the views certainly then entertained by a majority of the Representatives. He said :

Now, sir, I contend, that although this bill provides for the repayment of the money advanced by the Government, *it is not expected that a cent of the money will ever be repaid.* If the Committee intended that it should be repaid, they would have required it to be paid out of the gross earnings of the road, as is done with the roads in Missouri, Iowa and other States, and not the net earnings. There is not, perhaps, one Company in a hundred, where the roads are most prosperous, that has any net at all. I undertake to say that not a cent of these advances will ever be repaid, nor do I think it desirable that they should be repaid. The road is to be the highway of the nation, and we ought to take care that the rates provided shall be moderate. I think, therefore, that this will turn out a mere bonus to the Pacific Railroad, as it ought to be.

The amount of bonds actually issued to the two corporations, the Union and Central Pacific, was \$55,092,192, but it was estimated in these debates, as we have seen, that the amount required to be issued would be about sixty-five millions ; and that several of the speakers stated that the Government was then paying seven million three hundred thousand dollars per annum for the service which the Union and Central Pacific Railroad Companies were required by the Act to perform ; and as about one-half of that sum would pay the annual interest, there would be enough of the annual compensation remaining to pay off and discharge the principal of the bonds within twenty years from the completion of the road.

The Central Pacific Railroad Company tried in good faith to comply with the contracts it had entered into by accepting the terms of the Act of 1862.

In the debate on the amendment of 1864 Mr. Thaddeus Stevens said :

Certain it is that upon the California side of the line they have gone to work with excellent zeal. \* \* \* The Company have raised already upon that side of the mountains over fifteen millions of dollars.

It managed, by the sale of such portions of its stock as it could dispose of, and by contracting debts on the individual credit of its promoters, to build thirty-one miles of its road, from Sacramento to Newcastle. But until the passage of the Act of July 2, 1864, it was unable to construct beyond that point for lack of the necessary funds.

On the 8th day of January, 1863, it commenced the construction of its road at the City of Sacramento.

The City of San Francisco had been instructed by an Act of the Legislature to subscribe for six hundred thousand dollars of the stock of the Central Pacific, and to issue its bonds for that amount in payment.

The City of Sacramento was authorized to subscribe for three hundred thousand dollars of stock ; and the County of Placer for two hundred and fifty thousand dollars.

The State of California had enacted that it would pay the interest on one million five hundred thousand of the bonds issued by the Central Pacific for the period of twenty years.

The citizens of San Francisco resisted the subscription authorized by the Legislature, and the contest which resulted in the Courts, in addition to the cost of the litigation, besides causing embarrassing and ruinous delay, seriously affected the financial credit of the Central Pacific, and caused such a depreciation of its stock as to render it unmarketable.

The people of San Francisco were afraid that the City would become liable for a portion of the debt incurred by the Central Pacific in the construction and equipment of its road, and although the highest tribunal of the State sustained the validity of the legislation by which the municipality was directed to subscribe for and pay for the stock, and although various writs of mandamus were issued commanding the officers of the City to subscribe for and to issue the bonds in payment of the stock, the Railroad Company found it for its interest to compromise the litigation by accepting from the City a donation of four hundred thousand

dollars of its bonds, and releasing it from its obligation to make the directed subscription.

The litigious spirit manifested by the authorities of San Francisco had its effect on those controlling the finances of the other Counties and of the State of California, and until the compromise had been made with the City, the promised aid from the State and Counties of Sacramento and Placer was not available.

The promoters had used their own private credit in building the thirty-one miles. They could not have the work of construction accepted by the United States until they had forty consecutive miles completed. The Company was therefore unable to obtain the assistance, either in the way of bonds or lands contemplated in the Act of 1862. The Government then held the prior lien, and it was expected would take the property.

This delay, as shown in the testimony of Governor Stanford, was fraught with most momentous results to the interests of the corporation, as well as to the advancement of the City of San Francisco. If the aid that had been promised by the State of California and the Counties of San Francisco, Sacramento and Placer had been cheerfully yielded, after the necessary legislative authority had been obtained, the Company could, in the winter of 1863-64, have constructed several miles, of the most costly character, of its work over the Sierra Nevadas. It was an unusually fine and open winter, the temperature being mild and the fall of snow light. The cost of the work that winter, in comparison with the same work in the succeeding winter, would no doubt have been from twenty to twenty-five per cent. less. And at this time the Union Pacific, not being able to find means to carry out its contract, formed by its acceptance of the Act of 1862, had not commenced the work; and there can be no doubt, that if the Central Pacific had been enabled to continue its construction eastward, without any delay after it arrived at Newcastle, the junction of the two roads would have been made nearly five hundred miles further east than it was.

It is needless to describe what the financial condition of the Central Pacific would have been under such circumstances, or how much better able it would have found itself to respond to the demand of the Government now made, which it did not anticipate when it accepted the terms of the Act of 1862.

But this contest with the State and County authorities was not

limited, as we have seen, to a mere deprivation of money to the amount lost in the compromise, but, in addition to the evils of the delay, it had the effect of raising a danger signal to all who might, under other circumstances, have subscribed to the stock of the Central Pacific Railroad Company, or aided in its work of construction.

Not only the capitalists of California, but those of New-York, Philadelphia and Boston, the last being most prominent at that time in aiding the railroads, reasoned that if the City of San Francisco, whose citizens and business men were so much interested in the success of the construction of the Central Pacific Railroad, and whose future prosperity would be so much controlled by it, were not willing to subscribe to its stock, and would rather pay a forfeit of four hundred thousand dollars than, by the payment of two hundred thousand dollars more, becoming the owner of six hundred thousand dollars worth of stock, subject to the liabilities created by the Constitution and laws of California, and to the future exigencies and engagements of the Company, it was sufficient warning for others not so interested to avoid subjecting themselves to the perils of stockholders in the corporation.

As a part of the history of the Central Pacific enterprise it will be well to note here the language used by the Legislature of California when, on April 4th, 1864, it passed an Act guaranteeing the interest on 1,500 bonds of the Central Pacific :

Whereas war now exists, and is in immediate and vigorous prosecution between the Government of the United States and certain States which have rebelled against its authority ; and whereas the Congress of the United States has for military and other purposes granted aid for the construction of the Central Pacific Railroad, which aid is insufficient to complete the work as speedily as is necessary ; and whereas it is important, in view of the present state of war and the further (future) danger thereof, that the said railroad be constructed as soon as possible to repel invasion, suppress insurrection and defend the State against its enemies, therefore the people of the State of California, represented in Senate and Assembly, do enact as follows, etc., etc.

## III.

## CHANGE OF CONTRACT BY THE ACT OF CONGRESS OF 1864.

The Union Pacific found itself unable to construct any portion of its road under the Act of 1862, and did not commence building until some time in the spring of 1865, and in that year completed forty miles. It numbered among its corporators the most wealthy men of the nation, but the terms offered by the Act of 1862 were not sufficiently inviting. The Central Pacific, although attempting to comply with the Act of 1862, found that in the tone and temper of capitalists it was impossible to build their road even with the aid as therein granted; and, therefore, their contract was changed by the passage of the Act of 1864, which permitted the Railroad Companies to issue their first mortgage bonds on the respective railroad and telegraph lines to an amount not exceeding the amount of the bonds to be issued by the United States, and of even tenor, date, time of maturity, rate and character of interest, and that the lien of the United States bonds should be subordinate to that of the bonds of said Companies authorized to be issued on their respective roads, property and equipments, *except as to that provision of the Act of 1862, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States*; and that the aid provided to be granted by the Act of 1862, should be given upon the completion of twenty consecutive miles instead of forty, and that the Government should retain only one-half of the compensation for services rendered to it by the Company to be applied in payment of the bonds issued instead of the whole; and that the Central Pacific should be required to complete only twenty miles in one year in place of fifty.

With this increased aid, and the improved credit of its promoters, the Central Pacific was enabled to move out from Newcastle, eastward, and to build its road to Promontory Point, where it made a connection with the Union Pacific, on May 10th, 1869, nearly seven years and two months less than the time provided in the contract.

## IV.

THE DIFFICULTY OF CONSTRUCTION AND THE GREAT COST OF  
THE CENTRAL PACIFIC ROAD.

The manner in which this construction was performed, the difficulty of its performance over and through the Sierra Nevada Mountains, the obstacles encountered in its construction in the winter months, the great cost of the work, the difficulty of obtaining supplies of men and machinery, and of water on the desert lands in Nevada, is graphically told in the evidence of Mr. Stanford, the President of the road, Mr. J. H. Strobbridge, the Superintendent of Construction, Mr. Arthur Brown, the Superintendent of Bridges and Buildings, Mr. L. M. Clement, the Assistant Chief Engineer in charge of the work, and of Mr. Alfred E. Davis—all of which was taken before the United States Pacific Railway Commission at San Francisco.

For convenience and by way of illustration we copy here a portion of the testimony of these witnesses.

Mr. L. M. CLEMENT, the engineer in charge of the work, said, in a sworn statement :

At the beginning of the construction, the Company, knowing the political and commercial necessities demanding the rapid completion of the railroad, determined that nothing which was in their power to prevent should for a single day arrest its progress. With this determination in view, all energies were bent, notwithstanding the physical obstacles and financial difficulties to be overcome.

The financial difficulties were not lessened by the opinions then prevailing to the effect that the obstacles were insurmountable, that the railroads then constructed were bagatelles as compared with the difficulties to be met in constructing the Central Pacific Railroad ; that not only was it impossible to construct a railroad across the Sierras *via* Donner Pass, but owing to the great depth of snow, it would be impracticable to operate, and, if built, must be closed to traffic in the winter months.

As the Company was confined to the use of American rails, the prices raised 80 per cent., from 41 to 76 dollars per ton. The average prices during the building of the road were \$91.70 per ton at the Eastern rolling mills. The rails had to be transported to San Francisco *via* Cape Horn or the Isthmus, thence by schooners to Sacramento, the initial point of the road. Shipments *via* Panama as late as the year 1868 cost for transportation \$51.97 per ton, making the cost at Sacramento \$143.67, not including the cost of

transfer from San Francisco. Delays and the losses of ships made it necessary to use the Isthmus route, and for locomotives transported by that route the Company paid as freight as high as \$8,100 for one locomotive. On a shipment of 18 locomotives the transportation charges were \$84,866.80, or \$4,692.50 each. The Company paid for two engines \$70,752. The payment was necessary to avoid delay. The first ten engines purchased cost upwards of \$190,000, the second ten upwards of \$215,000. The demand for power was great to overcome the high mountain gradients. Labor shared in the advance in prices. California's laborers were mostly miners accustomed to work in placer mines, which was more to their liking than the discipline of railroad work. They were indifferent, independent, and the excitement of the discovery of the Comstock lode was upon them, where any able bodied man commanded four or more dollars per diem. There was not sufficient labor then on the Pacific Coast to construct the Central Pacific, and such as could be obtained could not be depended on. The first mining excitement meant the complete stampede of every man and the abandonment of the work.

Each day brought up propositions which must be solved without delay, so that the construction might advance.

As the snow line was reached, the depth of snow increased towards the summit, from a few inches to over fifteen feet on a level from actual measurement. The ground was kept bare for the graders by shovelling; upwards of one-half of the labor of the entire grading force being expended in removing snow. Not only was this necessary, but to make excavations, the space to be occupied by the embankments was cleared and kept clear of snow; otherwise the melting of the snow under the broad bases of the high embankments would have caused serious settlements, which, on ascending gradients, already of 105 and 116 feet per mile, would, in cases, increase the gradient beyond the tractive power of the engine. It required an army of men to clear away and keep clear after a storm for a small gang of graders. Rock cutting could not be carried on under snow drifts, varying in depth from 20 to 100 feet. It was decided, no matter what the cost, that the remaining tunnels should be bored during the winter. To reach the faces of the tunnels, the snow drifts were tunneled, and through these all rock was removed.

Retaining walls in the cañons were built in domes excavated in the snow, the wall stones raised or lowered to their places in the dome through a shaft in the snow. All the force, numbering thousands, could not be worked in the tunnels and in the retaining walls; the surplus men, with their tools, luggage, &c., were hauled beyond the summit, skipping the line now covered with deep snow, and active work begun in the cañons of the Truckee River. That no delay, even here, should result from the unfinished gap, twenty miles of rails with their fastenings, a locomotive and cars sufficient for working were, by oxen and horses, hauled over the summit and down into the cañon of the Truckee River.

It was deemed wise to do some of the work in the lower mountains crossed by the railroad in Utah, so that when the track reached those points there

should be no delay. About one car load of tools and material was wagoned from Wadsworth to the Promontory Mountains, at a cost of \$5,400. Everything was expensive; barley and oats ranged from \$200 to \$280 per ton; hay, \$120; all other supplies in Utah in the same ratio.

Along the Humboldt River much of the line was constructed during the winter; earthy material that could ordinarily be excavated by the pick and shovel, were frozen to such a depth as to require blasting. This frozen material made expensive embankments, requiring constant attention when the frost was leaving it, to maintain the roadway in condition for the transportation of material to the front.

As early as it was possible in the following year to again attack the work in the heavy snow belt region, the forces were returned to the granite cliffs and cañons. This army of men shoveled off snow to gain time; miles of line were thus made ready for the drill and powder; \$67,500 worth of powder in a single month being used, a sum sufficient to construct and equip three miles of ordinary railroad at the present time.

During the winter months there was constant danger from avalanches, and many laborers lost their lives.

When possible to reach the threatening combs of great masses of compact snow leaning over the granite bluffs, they were removed by powder.

When the forces were concentrated, the progress in the solid granite ledges was slow but certain. The track was kept close up to the grading forces, and never lagged when it was possible to provide track material, power or rolling stock, either by steamships or sailing vessels.

For many days, owing to the hardness of the rock in the vicinity of Cisco, it seemed impossible to drill into it a sufficient depth for blasting purposes, shot after shot fired as if from a cannon, perseverance alone conquered.

That was before the powerful explosives were invented, and the many other improvements made for railroad construction purposes in the last twenty years.

The Company, at the summit of the Sierras, Donner Pass, manufactured nitro-glycerine, but it was too dangerous for general use.

Transportation of material, tools, etc., was then an important factor in construction. There were then no such powerful engines as of the present day, which can haul two of the *then* most powerful ones and their loads; no cars to carry 50,000 pounds of load.

All material for construction, excepting timber, had to come from the Atlantic States, *via* the Isthmus or Cape Horn to San Francisco, there lightered for ascending the Sacramento River to Sacramento, and thence hauled over the Central Pacific so far as completed, and, when needed, wagoned beyond the end of the track. Trains returned empty. There was not one inhabitant to ten miles between the east crossing of the Truckee River and Bear River in Utah.

With the exception of a few cords of stunted pine and juniper trees, all the fuel was hauled from the Sierra Nevada Mountains. Not a coal bed on the line of the Central was then known, and the only one yet discovered is a poor quality of brown lignite.

Water was scarce after leaving the Truckee and Humboldt Rivers, and during the entire construction was hauled for steam and general use of the grading forces.

Thousands of dollars were expended in well boring. Tunnels were bored into the mountains east of Wadsworth to develop small springs, and when water was found it was carefully protected, so very precious was it, and conveyed in some cases over eight miles in pipes to the line of the road.

There was not a tree that would make a board on over five hundred miles of the route, nor satisfactory quality of building stone. The country afforded nothing entering into the construction of the superstructure of a railroad which could be made available.

The maximum haul for ties was 600 miles, and of rails and other materials and supplies the entire length of the Central Pacific Railroad, or 740 miles.

Cars were transported on ships, in pieces, to San Francisco, and lightered for Sacramento, and there put together.

California had no means of manufacturing for railroad building. Only 14 years prior to the beginning of the construction of this railroad was there any considerable emigration directed to this coast.

A quarter of a century has made great changes. Once the possibility of constructing a railroad across the mountain ranges and deserts proven, and emigration started west, capital was less timid of the probable future of railroad enterprise, and means were furnished for constructing other trans-continental roads; and by the aid of machinery, powerful explosives, and experience, they can now be constructed at comparatively light cost. It is probable, that had the road been constructed during the five years preceding, it would not have cost more than 66 per cent. of what it actually did cost.

The principal elements, materials, transportation and labor, were very much cheaper. Rails averaged 51 per cent. less; transportation, 63 per cent. less. All elements excepting labor was a large per centage less.

If constructed five years subsequent, it would have cost about 75 per cent. of the actual cost. Had the whole time allowed for construction of the Central Pacific Railroad been used, it is not an easy problem to determine for how much less the road could have been built. Advantage of the markets could then have been taken, contractors would have been willing to undertake the work, if a reasonable time for completion were allowed, so that they would not be required to perform any of the work during the winter months, where mercury freezes, and in deep snows; in fact, all the advantages of seven additional years.

Mr. Strobridge, the Superintendent of Construction, stated on oath :

The work was pushed with the utmost vigor; all the men were hired that could be found, and no effort or expense was spared to complete the road as quickly as possible. In this way it was finished and in operation from Sac-

ramento California, to Ogder., Utah, about seven years sooner than was required by Act of Congress.

Very high prices were paid for powder, and all tools and supplies used on the work, and nothing was spared that would hasten its completion ; and the work was pushed regardless of the season.

The winter of 1865-66 was a very wet one, making the roads on the clay soils of the foothills nearly impassable for vehicles. Large numbers of pack animals had to be brought into use, and on them were carried nearly all supplies, even hay and grain, over steep mountain trails to the construction camps.

As illustrating the impassability of the roads, the stage running from end of track to Virginia City was stuck in the mud, and left standing in the street at Gold Run for six weeks, the passengers being carried in the meantime by saddle train, from the railroad at Colfax to Dutch Flat.

The building of the railroad during this time was prosecuted with energy, but at much greater cost than would have been in the dry season. During the winter of 1866-7 and also of 1867-8, there were unusually heavy snow-falls in the upper Sierra Nevada, where the road was then under construction.

In many instances our camps were carried away by snow slides and men were buried, and many of them were not found until the snow melted the next summer.

In the spring of each year the men were taken back from the Truckee into the mountains, and an average depth of ten or twelve feet of snow was cleared away before grading could be commenced. The total snow fall of the season was about forty feet ; and the depth of hard, settled snow in mid-winter was eighteen feet on a level in Summit Valley and Donner Pass ; over which we hauled on sleds, track material for forty miles of railroad, three locomotives and forty cars, from Cisco to Donner Lake, where all was reloaded on wagons and hauled over miry roads to Truckee, a total distance of twenty-eight miles, at enormous cost. In this way the road was forced to the east slope of the Sierra Nevadas.

In crossing the deserts east of the Truckee River, water for men and animals was hauled at times forty miles. It was necessary to have the heavy work in the Palisade Cañon done in advance of the main force ; and 3,000 men with 400 horses and carts were sent to that point, a distance of 300 miles in advance of the track. Hay, grain and all supplies for these men and horses had to be hauled by teams over the deserts for that great distance, there being no supplies to be obtained on the entire route.

The winter of 1868-69 was one of severe cold. The construction was in progress in the upper Humboldt Valley, where the ground was often frozen to a depth of two and three feet, and material required blasting and treatment like rock, which could have been cheaply moved in a more favorable time.

The entire cost of the railroad, had it been built with less speed, and as such railroads are usually constructed, would have been fully seventy per cent. less than its actual cost, as it was built with rapidity of construction

the main consideration, and without regard to any outlay that could hasten its completion.

The railroad from Newcastle, on the west slope of the Sierras, to Wadsworth, at the beginning of the Nevada deserts, 157 miles, was built between February, 1865, and July, 1868, more than three years, with a force averaging 11,000, and at times reaching 13,000 men.

The railroad from Wadsworth to Ogden, about 555 miles, was built between July, 1868, and May, 1869, about ten months, with a force averaging 5,000 men. If the country between Newcastle and Wadsworth had been of the same average difficulty as that between Wadsworth and Ogden and between Ogden and Omaha, the labor that was put upon the Central Pacific Railroad would have built it to a point far east of Omaha in the same time, the work from the east slope of the Sierra Nevadas to Ogden being more than an average of that from Ogden to Omaha.

Mr. ARTHUR BROWN, Superintendent of Bridges and Buildings, set forth in his affidavit :

I submit a brief outline of the construction of the snow sheds over the Sierra Nevada Mountains, on the line of the Central Pacific Railroad, as well as the conditions which made them a necessity. As Superintendent of Bridges and Buildings, that work was assigned to myself. The excessive snow belt, where the road crosses the Sierra Nevada Mountains, extends from a point near Blue Cañon, on the western slope, to Cold Stream Cañon, on the east, a distance of about forty miles, having its maximum depth near the summit. The snow fall for the season has been known from actual measurement to be nearly fifty feet. In the fall of 1866 the road was opened to Cisco. The experience in keeping the road open through the following winter, led to the construction of the snow sheds. Although every known appliance was used to keep the road clear from snow that winter, including the largest and best snow plows then known, it was found impossible to keep it open over one-half of the time, and that mostly by means of men and shovels, which required an army of men on hand all the time at great expense. It was decided, after various discussions by the Directors, that the only positive means of protecting the road was by means of snow sheds and galleries, although the expense of building a shed nearly forty miles in length was appalling, and unprecedented as an extra in railroad construction. In the summer of 1867 we built some experimental sheds. The snow shed building was commenced in earnest in the spring of 1868. Owing to the short season in which the work had to be done (less than five months) it was decided to cover all the cuts, and the points where the road crossed the great avalanches beyond the summit, with the idea that the high embankment on the road could be kept clear of snow. As the road was then rapidly progressing up the Valley of the Humboldt, it became a matter of the most vital importance that the sheds should be so far finished that the supplies and building materials for construction ahead should not be interrupted, as the connection was to be made in the spring of 1868. We, there-

fore, had to gather men from all quarters and pay high wages : carpenters, \$4.00 per day ; and suitable laborers about \$2.50 to \$3.00. We employed about 2,500 men, with six trains with locomotives distributing material.

The expense was considerably increased by the fact, that we had to keep the road clear for traffic, which was great, owing to the large amount of building material forwarded to the front, and to avoid accident, which consumed about 30 per cent. of the time, consequently increasing the cost in that proportion. Besides, we had, by commencing in the spring, to shovel from six to eight feet of snow before we could put in foundations for sheds. In the fall we continued until snow stopped us entirely, although we had been shoveling snow for nearly two months. The expense of shoveling snow, and the difficulty of getting men at reasonable wages to remain on the work, owing to the snow, bad weather, &c., added very much to the cost. As there were not sufficient saw mills to supply the necessary material, we had to resort to round and hewn timber, which had to be got from the woods and brought to the track at great expense. The galleries are built along the side of the mountains, where the slope of the roof conforms with that of the mountains, so the snow can pass over easily. Some of these galleries run back on the slope of the mountains several hundred feet from the centre line of the road. In other places massive masonry walls were built across ravines to prevent the snow from striking the sheds at right angles. The snow sheds and galleries were finished in the fall of 1869. In them was used 65,000,000 feet, B. M., of timber, and 900 tons of bolts, spikes, &c. The total length of sheds and galleries, when finished, was about 37 miles, but there were several pieces built afterwards, bringing it up to nearly forty miles, at a cost of about \$1,500,000. For several years the loss from fires was considerable, as several miles were burned down, and had to be rebuilt. Water trains are now constantly kept on hand for sprinkling down the sheds twice a week, thus preventing their destruction by fire. A number of the tunnels through the same mountains had to be timbered at a great expense. As most of it had to be got out in the winter time, and as it was impossible to keep the roads open, we had to employ men and bring timber to the tunnels on hand sleds.

I am quite familiar with all the extraordinary exertions put forth in all departments of this work, and especially the almost superhuman efforts put forth by Mr. Strobridge, Superintendent of Construction, in keeping the men at work on the rock work and tunnels, and shoveling snow at great depth during the fall and winter.

I consider, from my experience, that, if time could have been spared to take advantage of the proper seasons, it could probably be duplicated now for less than forty per cent. of its original cost.

In the very able report on Trans-continental Railways, heretofore noticed, made by Col. O. M. Poe, of the Engineers' Corps, to General Sherman, he says of the construction of the Central and Union Pacific :

Literally an army of workmen were employed—25,000 men and 6,000 teams—and the route presented a busy scene. The woods rang with the strokes of the axe and the quarries with the click of steel. The streams were bordered with lumbermen's camps and choked with floating logs, *and materials, supplies and equipment for the Central Pacific were scattered from New-York, via Cape Horn and San Francisco, to the very end of the track advancing eastward.*

Without undertaking in any way to detract from or underrate the services performed by the Union Pacific in the accomplishment of its contract, it will be remembered that the Central Pacific labored under great disadvantages which were not shared by the Union Pacific, and that the work of its construction was much more costly. At the time that the Union Pacific had reached the one hundredth mile post, west of Omaha, it was in direct railway communication with the rail mills and manufactories of the Eastern States. Before that time its supplies were shipped by rail from Chicago to Saint Joseph, and thence by the Missouri River to Omaha. It could obtain its supplies daily, if it wished, and in such quantities as it desired. But the Central Pacific was separated by two oceans, and twenty thousand miles, from the source of the materials required for the construction of its road. It could not predict, within two months of the time, when the rails it had ordered from the Eastern rolling mills would reach the western end of its track ; and in addition, it was subjected in the receipt of its supplies to the chances of shipwreck, of vessels putting into way ports on the South Atlantic or South Pacific for repairs. Its work of construction was attended with drawbacks and disappointments, and great expenses that were not shared by the Union Pacific Company. It had to pay war rates of insurance, ranging from five to seventeen per cent., from which tax the Union Pacific was free. And when pressed for time, or to remedy a loss of material that had occurred in the transit around Cape Horn from New-York, it was compelled to send rails or locomotives across the isthmus of Panama. It was subjected to burdens from which the Union Pacific was totally free, as is shown by the testimony of Mr. Clement, Mr. Strobbridge and Mr. Brown, heretofore noticed.

Being at such a distance from its base of supplies, it was compelled to keep material for nearly a year's construction constantly in transit. It had upon the ocean for the greater part of the

time it was engaged in the construction of its road, materials valued at from one to three millions of dollars, upon which it was incurring an interest account, ranging for most of the time from twelve to fifteen per cent. per annum. We have it in evidence before the Commission, that the rails used in this work cost at the point of production from \$74 to \$115 in cash per ton. 500 tons were purchased at \$262 in Central Pacific stock, with \$5 additional added for delivery in New-York or Boston ; and that the average price paid in New-York during the entire work was \$80 a ton. The freight from New-York to San Francisco, around Cape Horn, averaged \$17.50 per ton ; insurance was from five and a half to seventeen per cent. It will therefore be seen, that the cost to the Central Pacific of rails in San Francisco, at the lowest rate of insurance, without interest, was \$101.50 per ton. To this must be joined the cost of transportation from San Francisco to the western end of the Central Pacific, which averaged two dollars per ton ; and the cost of moving to the point of construction being added, makes it entirely safe to calculate that the average cost of the rails used on the Central Pacific was not less than \$125 per ton laid in the track.

These enormous prices and expenses, added to the general character of the country through which the Central Pacific was built, and the difficulty of obtaining fuel, and the long distance over which water was transported for the use of the engines engaged in construction and of men employed, is one of the reasons why, joined to others discussed hereafter, this Company exhausted the proceeds of all the aid granted to it in bonds by the United States, and such portion of the lands as it had sold at the completion of the road to Promontory, and the proceeds of the first mortgage bonds which it had issued, and all the aid which it received from the counties of California, and the proceeds of its bonds, the interest on which for twenty years was guaranteed by the State of California, and the moneys received from the sale of the stock of the Central Pacific, in the construction and equipment of the aided road between Sacramento and Promontory Point, and the purchase from the Union Pacific of the road between Promontory and Ogden, so as to comply with the Act of Congress, that the common terminus and point of junction should be fixed at Ogden, and that at the completion of such

construction and purchase it was several millions of dollars in debt.

The charge, so often made, that the promoters of the Central Pacific made great profits in the construction of the road, is utterly refuted. When it was finished they could not have paid their debts from the assets then remaining. The Secretary of the Company has shown the faithful expenditure of every dollar received prior to the completion of the road—that it was all consumed in construction and equipment.

No one who reads the evidence given before the United States Pacific Railway Commission will deny that the promoters of the Central Pacific enterprise labored earnestly and manfully not only to fulfill their contract with the Government, but to comply with its wishes for an earlier completion of the road; and they did it without regard to their own pecuniary advantage, believing that the Government would treat them equitably in the premises.

The Government and the people were very anxious for the fruition of the scheme that had so long held a prominent place in the public mind. The early events of the war had shown the peril of not having frequent and rapid communication between the Atlantic and Pacific States; and the Companies having the work in charge did all that lay in their power to gratify the popular desire for its early completion, without regard to the cost to themselves.

Before the roads were fully finished the Government commenced to realize benefits from the partial fulfillment of the contract, in its facilities for transportation of mails, and of troops and munitions of war to its various forts, and by its opportunity of communicating with the commanding officers by telegraph.

These benefits and advantages to the Government increased with the further progress of the road, until it was finished.

When the Union and Central Pacific connected their tracks they had performed all their part of the contract to the best of their ability. They had accomplished the great work that had filled so large a space in the public thought; and they put the easements and facilities which their lines afforded at the disposition of the Government, to the great advantage of the nation, and the protection of its territory.

The "glad tidings" that were telegraphed from Promontory by

the Presidents of these two Companies, on the 10th day of May, 1869, to the victorious General of our Armies, at that time President of the United States—

We have performed our contract with the Government, and there is now continuous connection by rail from the Missouri River to the Sacramento, and from the Atlantic Ocean to the Pacific—

was second only in its importance to the pregnant message sent from Appomatox by this same gallant soldier to President Lincoln, when the unity of the nation was assured by the surrender of General Lee and his army.

They had done the work that was given them to do ; and in spite of all criticism to the contrary, they had done it well. But from that moment, when the Government was notified of the performance of the contract, when the advantages so hopefully anticipated by the Senators and Representatives who voted for the passage of the Act of 1862, and the amendment of 1864, were at the disposition of the Government, it commenced to disregard all its obligations under the contract, and to lay its heavy hand on the corporations who had accomplished this great national work.

This is a statement that can only be made with shame and mortification by a citizen respecting his Government ; but it is the truth ; and justice in behalf of those whom the Government is oppressing requires that it should be said.

It is this persistent and willful disregard of all its contract obligations on the part of the Government in its dealings with the Central Pacific, that gives this Company the right to come to the people's representatives assembled in Congress, to make known its grievances, to present its equities, and to demand appropriate relief.

As the Central Pacific had been true in all its obligations to the Government in the construction of its part of the national highway, so it has continued faithfully to observe all the obligations it entered into when it filed its acceptance of the terms of the Acts of 1862 and of 1864.

In July, 1864, on the very day the contract between the Government and the Union and Central Pacific was amended, Congress passed an Act subsidizing the Northern Pacific Road, the effect of which was necessarily to take from the Central Pacific the busi-

ness north of California. And in July, 1866, while the constructors of the Central Pacific were bending all their energies, as we have heretofore shown, and seeking every aid within human reach to tunnel the rocks of the Sierra Nevada Mountains, to remove the masses of compact snow, to cut down the timber and clear a suitable bed for their rails, the Government subsidized still another road, the Southern Pacific, the building of which could only result in taking away from the Central a large portion of the trans-continental traffic intended for California, and which the construction of the Union and Central was intended to control, and to compel the Central Pacific, for its own protection, to purchase it, and to limit its ability to respond to the demands of the Government, and to decrease the amount of the net earnings which, under its contract, it was obligated to render to the Government.

It will not, of course, be contended that if Congress, acting for the best interests of the nation, thought it wise to subsidize these roads, it should have refrained, because of the contract it had made with the Central and Union Pacific ; but its action in this respect certainly does raise many equitable considerations, which should be considered and determined in the settlement of the questions now existing between it and the corporations.

And such would appear to be the view adopted by Congress in the passage of the Act of March 3, 1887, authorizing the appointment of a Commission to investigate the books, accounts and methods of railroads which have received aid from the United States, and directing the Commissioners—

To inquire if the United States, since the Union and Central Pacific Railroad Companies accepted the terms proposed by Congress for the construction of the Pacific Railroads, has granted aid in lands for building competing parallel railroads, and if so, how many said roads, and to what extent such competing lines have impaired the earning capacity of the Pacific Railroads.

The testimony taken by the Commission to enable it to answer this inquiry, shows a loss to the Central Pacific from 1881 to 1886 of about \$17,000,000. We will refer to this testimony hereafter.

The people of the United States have benefited by the competitive rates from which this loss resulted. The profits of the Central Pacific on its through traffic have been almost totally destroyed, and its ability to meet its pecuniary engagements to the Government greatly lessened. The action of the Government

in creating these factors to share the overland business must be considered a violation of the contract of 1862, made in the public interest, for which the Central Pacific is entitled to compensation, commensurate with the damage.

An impartial judgment on the acts and motives of the men who constructed the Central Pacific is difficult to be obtained from those who were not familiar with the peculiar trials, drawbacks and hardships to which they were subjected during the term of such construction.

After the lapse of time we are apt to underrate the obstacles that attended an effort successfully accomplished.

Even seven years after the road was completed, the embarrassments of its constructors had partially faded from the public mind, as we learn from the following extract from the letter of Mr. Huntington, dated April 3, 1876, to Senator Edmunds, which was printed by order of the Senate :

The relations between the Government and the Pacific Railroad Companies, growing out of the Acts of 1862 and 1864, whereby the United States, in time of war, advanced its bonds, in order to insure and hasten the construction of a railroad and telegraph line between certain points on the Missouri River and the Pacific Ocean, and especially the pecuniary obligations created thereby, have again been pressed upon the attention of Congress and of your Committee.

The spirit and aim of those Acts, it is well known, was to establish, without the direct agency of the nation, railroad communication across the Continent, and this object has been attained under the terms and conditions then made, but years ahead of the allotted time. *Commonplace as the achievement may seem now, at the time of its inception it was deemed a work so novel, so bold and vast, that but few believed in its success, while there was a general apprehension, both in the public mind and among their representatives, that it might be long delayed or fail altogether.*

A Committee room in the Capitol, or the Chamber of either branch of Congress, is not conducive to a just decision of any controversy between the Central Pacific and the Government. It should have been heard on the Sierra Nevada Mountains in the winters of 1865-66, 1866-67, or 1867-68, during the times when, according to the testimony of Civil Engineer Clement, Constructor Strobbridge, and Bridge-builder Brown, it seemed that the efforts of man to construct a track over these mountains was apparently being successfully resisted by the determined force of the elements.

The physical and financial energy and ability so auspiciously displayed to overcome the impediments encountered, can scarcely be well considered or determined under the dome of the Capitol.

## V.

### OBSERVANCE BY THE CENTRAL PACIFIC OF ITS OBLIGATIONS TO THE GOVERNMENT.

But it is now said that the Central Pacific Railroad Company has not been mindful of the obligations imposed upon it by the laws of the United States under which it received aid for the construction of its road.

It will be difficult certainly for the most avowed enemy of this Company to substantiate the proposition.

In what have its managers failed? They constructed their road, as we have heretofore shown, without any regard to their ultimate profit. They constructed it as if they were performing a national instead of a private work, and were more anxious for the interests of the nation than their own.

No matter what a thing cost, no matter what amount could be saved by delay, they pushed along, in season and out of season, (as the testimony before the Commission shows,) to insure the final completion of the work, and to open it for the public use as soon as human aid could render it possible.

If they had kept to the rigid terms of their contract, and had opened the road, as its letter required them to do, on the first day of July, 1876, instead of on the 10th of May, 1869; if they had availed themselves of their opportunities of buying in the cheapest market at a favorable time, instead of exhausting all their resources, as they did, and when the first through train was run over the road, owing a debt they could not have met if they had been pressed to pay it, they would, out of the sum of more than fifty millions in gold which they expended in the construction of the road from San José to Promontory, have saved at least twenty millions.

Is there any evidence in this of their being unmindful of their obligations to the Government? They sacrificed the immense sum they might have saved to show the practicability of

the work which had received the assent of Congress, and to demonstrate that, contrary to the opinions of the most able engineers of England, France, Germany and Austria, they were enabled to do their part in the construction of a road over the Sierra Nevada Mountains, and over the desert lands between those mountains and the Missouri River in an incredibly short space of time, and to successfully operate the same to the advantage of the public, the benefit of the nation, and to render it a commercial success.

It may be that those who read this statement will remember the criticisms of the leading London journals, that no other people but those of the United States would ever have conceived of so wild a project as the building of a road to connect the frontier of the Atlantic States with the Pacific Ocean ; and here it may be said, that their success in showing the practicability of a road over and through the mountain passes and the desert lands in one-half of the territory of the United States, was of much greater benefit and advantage to the nation than all the aid which the Government rendered to them. The result of their efforts is shown in there being five trans-continental roads in successful operation at the present time.

In what other respect have these Companies failed in their obligations to the Government ?

Have not the United States all that they bargained for ?

It was avowed in the debates prior to the passage of the bill of 1862, and declared in the bill itself, that the aid granted to the Companies was made upon condition—

That the said railroad and telegraph line shall be kept in repair and in use, and the said Company shall at all times transmit dispatches over said telegraph line, and transport mails, troops, munitions of war, supplies and public stores upon said railroad for the Government, whenever required to do so by any department thereof ; and that the Government shall, at all times, have preference in the use of the same for the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.

Has not the Government the benefit of this condition to the fullest extent whenever it chooses to use the railroad, instead of seeking for a cheaper mode of transit around Cape Horn or over the Isthmus of Panama ? Has there been any failure of the Company in its obligations in this respect ?

The purpose stated in the title of the bill is,

To secure to the Government the use of the same for postal, military and other purposes.

The road and all its equipment has been at all times open to the use of the Government whenever its sense of economy would enable it to pay the same rates as were paid by private citizens for the same services, instead of sending its business around Cape Horn, or through foreign countries, in defiance of the terms of its contract with the Company.

It stipulated for the payment of five per cent. from the time of the completion of the road. When the last section of the road was provisionally accepted by the Government this debt ridden corporation, the Central Pacific, asked for the bonds and lands that were due to it in accordance with the terms of the contract. The answer was, No. Your road is not completed. We have a report of the Board of Civil Engineers that we have appointed, who say you must spend nearly five millions of dollars to finish the road in the manner we require; and until it is so completed you cannot have the balance of the aid that is promised; and in addition to that we insist, as security that the road will be completed to the entire satisfaction of the Government, that you deposit with the Secretary of the Treasury four millions of your first mortgage bonds, and we will retain, in addition, as further security, all the lands which you are entitled to under the Act of 1864. But, nevertheless, in the meantime, although your road is not completed so as to entitle you to payment, you must still render to us five per cent. on the net earnings from the time that you run the first train over the road, from the time we have the full use of it in every respect.

The Central and Union Pacific demurred to this arrangement. But when the Supreme Court of the United States, differing as it did from the views expressed by the Court of Claims, and by the Circuit Court for the Northern District of California, reversed the judgment, and held that the United States was technically correct, and could, if it chose, persist in its inequitable demand, the Central Pacific at once obeyed the law and paid to the Government the amount which it claimed as five per cent. upon the net earnings from the time the last spike was driven.

And so when the contract was changed by the passage of the so-called Thurman Act, which the Central Pacific believed violated every principle of the law of contracts, it being advised and believing that the alteration of the original contract by the legislative department was beyond its authority, and that the Act was invalid, submitted the matter to the Courts, and when, against what might be said to have been the indignant protest of Mr. Justice Strong, Mr. Justice Bradley and Mr. Justice Field, the Court sustained the validity of the Act; the Central Pacific complied with it, and is still complying with it, although to the great detriment of the corporation and the Government, whose anticipations of benefit have not been realized, because the change was not based on sound principles.

Where is the evidence that the Central Pacific corporation has not kept its part of the contract, or that it has in any way failed to comply with any of its obligations to the Government? It has rendered to the Government all that was demanded in the contract, the building of the road, and in about one-half the time that the law allotted.

Whenever the rights of the United States have been ascertained, the Central Pacific has accorded those rights, and has cheerfully and promptly yielded to the demands of the Treasury upon it.

It is the merest perversion of language to say that this Company has in any way failed in its obligations towards the Government.

But while there is no evidence to sustain such a charge against the Central Pacific Railroad Company or its officers, we find abundant evidence in the Executive departments of the Government to refute it.

The Attorney-General, in his report to the Senate at the first session of the 48th Congress, said :

*First.* The Central Pacific Railroad Company has fully and promptly complied with the requirements of said Act. (Meaning the Act of Congress generally known as the Thurman Act.) (See Ex. Doc. No. 121, p. 2.)

At the same session, in answer to further inquiry, the Attorney-General said :

In further reply to the inquiry of the Senate, I have the honor to state

that I am informed by the Secretary of the Interior that the Central Pacific has met and paid the demands of the Commissioners of Railroads, reserving all its rights. (Ex. Doc. 124, p. 3.)

William H. Armstrong, United States Commissioner of Railroads, in his report for 1882, says :

Able and expert accountants of this office have investigated and reported upon the business, financial condition, and the proportion of net earnings due to the Government for the past year. The results are shown in detail under the proper headings. Free access has been accorded to the books and accounts of the several subsidized roads whenever requested. Detailed statements of the earnings and expenses, financial condition and physical character of the various land grant roads have been compiled from examination of the returns made, and are herewith submitted. As a rule, the accounts of the road are kept in a thoroughly comprehensive and business-like manner. (Report of 1882, p. 5.)

Again, he says :

Under the Act of May 7, 1878, the bookkeeper of this office checked the books and accounts of the Company (The Central Pacific Railroad Company) in San Francisco, with a view to the ascertainment of the twenty-five per cent. of the net earnings for the year ending, December 31, 1881. Twenty-five per cent. of the net earnings of the subsidized portion of the road was found to amount to \$1,038,935.24. The transportation for the Government during the year amounts to \$959,785.33, leaving a balance due the United States of \$79,149.91. A statement was rendered, and payment demanded October 20, 1882. A check for the amount was sent to the Treasurer of the United States, by the Vice-President of the Company, October 30, 1882. The Company has therefore paid to the Government all its accrued indebtedness to this date. (Same Report, p. 26.)

The same Commissioner, in his report for the year 1883, says :

In accordance with the Act of May 7, 1878, the books and accounts of this Company (The Central Pacific Railroad Company) were checked by the bookkeepers of this Bureau, in San Francisco, California, with a view to the ascertainment of twenty-five per cent. of the net earnings of that portion of the road, 860.66 miles, subsidized with the bonds of the United States, for the year ending December 31, 1882. The amount found due was \$792,920.24 ; against which the Company have performed transportation services on aided and non-aided lines, all of which have been retained by the Government, amounting to \$1,051,862.46, leaving a balance due the Company that year of \$258,942.22. The Central Pacific Railroad Company has promptly paid all balances found to be due to the United States, after statements have been rendered by this office. (Report of 1883, p. 42.)

The same Commissioner, in his report for 1884, says :

The property and accounts of the several railroads have been examined. The Companies (the Pacific Railroad Companies) have freely accorded all proper facilities for the inspection of their property, and the examination of their books. (Report of 1884, p. 3.)

General Joseph E. Johnston, Commissioner of Railroads, in his report for 1885, says :

The lease to the Southern Pacific Company has not affected the obligations of the Central Pacific Railroad Company to the United States, of course. The accounts of the Company were examined in San Francisco. \* \* \* The property of the Company was also examined, and found to be in good condition. The principal workshops at Sacramento are thoroughly equipped, and capable of making all the engines required by the whole system. The service of the road is excellent, ditches ample, road bed well raised, and bridges sound. (Report of 1885, p. 1.)

And again, in the same report :

The accounts of the Companies, under the supervision of this office, have been carefully examined, especially those of the Companies that were aided with the bonds of the United States, and the officers readily furnished all necessary facilities. The property, including railroad, rolling stock, workshops, is in good working order. The portion of this road, (the Central Pacific, between West Oakland and Roseville Junction, 159 miles, was found to be in the usual good condition, *so characteristic of this Company's railroads*. (Report of 1885, pages 3 and 42.)

Theophilus French, United States Auditor of Railroad Accounts, in his report for 1879, says :

This Company (the Central Pacific Railroad Company) has rendered such reports as have been required, and submitted its books and accounts for examination. \* \* \* The engineer's report shows, in considerable detail, the condition of the property covered by the lien of the United States. \* \* \* The equipment of the road is in good condition, and ample. \* \* \* The ferry service between Oakland and San Francisco \* \* \* is to be commended. The passenger service on the road is unexceptionably good. (Auditor's Report, 1879, pages 34 to 37.)

It is in order to refer here to the current testimony of the time for the impression made, even upon those who were not favorable to the owners of the Union and Central Pacific Roads, by the manner in which the managers of those Companies had performed their contract with the Government.

When the Act of May 7, 1878, was before the Senate, the Act known as the "Thurman Bill," by which the contracts between the Government and the Union and Central Pacific Railroad Companies were changed, without the consent and against the protest of the contracting parties, who, in reliance on the good faith of the Government, had built this national highway; Mr. Bogy, the Senator from Missouri, who favored this violation of the rights of the Railroad Companies, was compelled to yield the following tribute. He said:

*I look upon the building of the railroad from the waters of the Missouri to the Pacific Ocean, at the time particularly in which it was built, during the war, as perhaps the greatest achievement of the human race on the earth. I am old enough to remember when the scheme of a railroad from the waters of the Missouri to the Pacific Ocean was looked upon as a wild dream, as a thing nearly impossible, if not entirely impossible of accomplishment. Yet it was accomplished. And, in truth and in fact, it was accomplished at a comparatively small cost to the Government. The lands donated to the road were not worth a cent without a railroad. The Government had an empire lying west, between the waters of the Missouri and the Pacific Ocean—an empire which has sprung into great States and Territories from that day—a country which has become of great advantage, and which would have been utterly worthless without the railroad. It has bound to this portion of the confederacy the Pacific Coast with bands of iron, and no one can tell what might have been the destiny of that section during the war, if it had not been for the railroad. \* \* I give to the men who originated and carried through this great enterprise all possible credit for doing a great thing, at the critical moment, in a very short space of time.*

That the Company has been more than mindful of its obligation to the Government is proved by its reception to the Commissioners appointed under the Act of March 3, 1887. The President of the Company and its officers were advised, previously to the arrival of the Commissioners at San Francisco, that they owed no duty to the Government which was involved in the inspection of their books and accounts by these Commissioners. They were then advised by counsel, as has since been determined by the opinions of Mr. Justice Field and of Judge Sawyer, Circuit Judge of the United States for the Northern District of California, and of District Judge Sabin, that they were under no legal obligations to submit "their books and papers, accounts and methods" to the inspection of this Commission, or to submit themselves or their employees to oral examination. But so anxious were they

not to subject themselves to the charge of being wanting in any obligations to the Government, and being willing that the various Departments, both executive and legislative, might see that they did not shrink from any investigation into its affairs, that they have placed all the records of the aided Companies, and of all others that they control, within the inspection of the Commissioners and their large number of experts and accountants, and have answered all questions, irrespective of the laws and rules of evidence which it pleased the Commissioners to propound to them, until it came to the point of exposing their confidential relations with their attorneys and agents, the answers to which would not have concerned the Government, or borne in any way upon its pecuniary interests in the premises, as we will hereafter more fully show. They have submitted to this demand upon them rather than be thought to conceal any portion of their affairs from their creditor.

Senator Stanford, the President of the Central Pacific Railroad Company, in the testimony given before the Commission says, in substance, that during his administration as President of the Central Pacific Railroad Company, from its incorporation to the present time, there has never been any desire or intention, or any act done, permitted or suffered, with his knowledge, by which it has been intended to disregard the rights of the United States as a contracting party with the Central Pacific, and that in his judgment no such result has obtained from any act done by the Company which could in the ordinary course of business have been prevented.

Mr. Miller, Secretary of the Company, who has been connected with its affairs from 1862, says :

Not in any single instance during my twenty-five years' connection with the affairs of the Central Pacific has its business been so handled, or its property managed, with the intent on the part of its directors or officers to infringe or impair the interests of the United States.

And Mr. Crocker and Mr. Huntington have testified to the same effect.

We might close our remarks on this branch of the inquiry at this point. But it becomes necessary, with reference to determining the true position between the Government and the Central Pacific,

and the maintenance of those equities which are claimed by the Company, to examine how far the United States has performed its part of the contract.

It was certainly no part of its terms that the United States should subsidize another trans-continental line in 1864, or still another in 1866.

The effect of this departure from the spirit of the contract we will notice more fully hereafter. For it necessarily results, that from the building of those lines, the five per cent. and twenty-five per cent. of its net earnings which the Central Pacific is required now to pay annually into the treasury is not sufficient by nearly half a million to meet the annual interest on the bonds issued by the Government.

When the Act of 1862 was passed, it was the expectation of both parties to the contract, that the business which the Government would give to the Companies would be sufficient, not only to discharge the interest upon the bonds, but to create a sinking fund for the discharge of the principal within twenty years. And when the amendment to the contract was passed in 1864, one-half the compensation was to be used, so far as would suffice, for the same purpose.

It was part of the contract, as formed by the passage of the Act of 1864, that the Central Pacific should receive in cash one-half of the compensation for work done for the Government; that it should not be required to surrender any portion of its earnings, other than the five per cent. of the net receipts, until the maturity of the bonds, if at all.

But from a reading of the Act of 1862, although perhaps it is somewhat immaterial to state the proposition at this time, the Government never expected to demand any payment from the Company for the discharge of either principal or interest of the bonds, excepting the performance of the services described in that Act. There was not the slightest expectation on the part of either the Government or the Company that any portion of the earnings of the Companies would be rendered to the Government, excepting the compensation for the transportation done for it.

But it would seem, by the evidence taken before the Commission, that the Government has withheld the transportation, which, by the Act of 1862, and the Act of 1864, it contracted to employ the Central and Union Pacific to do.

Disregarding its obligations to those Companies, it has chosen other routes of transit, often paying more for the service in cash. As is shown in the evidence of Mr. Gray, the General Freight Agent, and of Mr. Miller, the Secretary, it has sent the public stores and supplies around Cape Horn and across the Isthmus of Panama, and of late a portion of its business between points in the Atlantic States and points in the Pacific States has been done for some distance by a foreign corporation, the Canadian Pacific Railroad.

It is not straining the testimony to say, that the proof shows that the United States has not of late given any of its transportation business to the Union or Central Pacific, excepting to local points on those lines, but has diverted its business to the lines competing with the Union and Central.

We wish we might stop here with the illustrations of the bad faith exhibited by the Government to the Central Pacific Railroad Company. Not only has the Government refused to perform its contract, in giving its business of transportation to the Central Pacific, as that contract required it to do, at the same price that it paid to other and competing lines, but it has absolutely refused to send it by the Central Pacific, an aided line, when its rates were the lowest it could obtain.

On this subject, the United States Auditor of Railway Accounts says :

The Government has taken away business across the State of Nevada, and has also given transportation to the Northern Pacific, the Southern Pacific, the Achison, Topeka and Santa Fe, the Atlantic and Pacific and the Canadian Pacific, all rival roads, and is paying them full rates, when they could get it done for less rates by the aided Central Pacific.

The effect of this departure by the Government from the plain terms of the contract, may be best understood, when it is stated that the action of the Government in the subsidizing of rival lines, and transferring the business of the Government to them, has resulted to the present time in decreasing the receipts of the Central Pacific over seventeen millions of dollars, within three million dollars of the entire amount of aid derived by the Company from the loan of the bonds of the Government ; and this consequence is an equity to be considered and allowed in stating the account between the Government and this Company.

It is shown by the books of the Central Pacific, that all the business done for the Government by that Company, in the transportation of freight, for the sixteen years between 1870 and 1885, inclusive, amounts to but \$1,098,047. That the cost for the same service which would have been paid, at the rates charged to the United States prior to the completion of the Central Pacific Railroad, would have been \$10,721,218.

And by a table annexed to the deposition of Mr. Miller, the Secretary of the Central Pacific, it appears, that in addition to the \$1,098,047 paid to the Central Pacific, the total amount paid to the Union Pacific for the same sixteen years was \$4,642,706, making the payment to both Companies \$5,740,753. That at the rate formerly paid by the United States for such services, the charge would have been \$61,161,703, making a saving to the United States during those sixteen years by the construction of the Union and Central Pacific Railroads of \$55,421,554, which is \$411,362 more than the principal of the bonds issued by the United States to the Union Pacific, the Central Pacific and the Western Pacific.

But, in addition to this saving in the transportation of freight for the same sixteen years mentioned above, the United States paid to the Central and Union Pacific for the transportation of troops and passengers moving on the business of the Government \$4,616,053.

Taking the reports made to the War Department by various Quartermasters, it is shown that for the services rendered, included in the last mentioned figures, there would have been paid by the United States before the construction of the railroad \$49,178,967, making a saving to the Government of \$44,562,914, which, added to the amount saved on transportation of freight, leaves in the Treasury of the United States over one hundred millions of dollars, between the amount paid to the Railroad Companies and the amount it would have paid for like services if the railroad had not been built.

But this does not state the entire financial benefit to the United States. On the 21st of October, 1868, the Post Office Department contracted with Wells, Fargo & Co. for the transportation of the United States mails between the western terminus of the Union Pacific and the eastern terminus of the Central Pacific, for the term of one year, from October 1st, 1868, until the two

railroads should meet, at the rate of \$1,750,000 per annum, subject to reduction *pro rata* for every section of fifty miles of railroad completed. This contract expired on the 9th day of May, 1869, when the Union and Central effected a junction.

But the Government did not deal so liberally with the Railroad Companies. The entire distance of the services, performed by Wells, Fargo & Co., was 1,095 miles ; but for the nearly 1,900 miles over which the Union and Central carried the mails of a very much larger bulk than that moved by Wells, Fargo & Co., and which has been and is constantly increasing, the Government has paid to the Union and Central from July 1st, 1868, to December 31st, 1885, as compiled from the reports of the Postmaster-General for the several years, \$10,606,507.22. At the rate paid for the tardy service, and the small volume of mails transported for the same length of time prior to the completion of the roads, the Government paid \$49,970,780.49, leaving a saving to the Post Office Department of \$39,364,273.29, making the entire saving to the United States for the sixteen years following the completion of the road, an amount exceeding one hundred and thirty-nine millions of dollars. And this saving was effected in one-half the time that the bonds loaned to these Companies had to run, or, in other words, leaving fourteen years to run before the maturity of these bonds. Computing at the same rate, the entire saving to the Government at that time will be about \$260,000,000. The Commissioner of Railroads, in his Report for 1883, says :

*“ The saving to the Government has greatly exceeded the current interest it has paid.”*

Shall it be said, in view of such an enormous financial benefit to the Government, and its failure to accord to those who contracted with it, and who have been the factors to produce this result, the benefits that were promised from its transportation and business, that there are no equities to be considered in determining the present relation of the Central Pacific Railroad Company and the United States ? As the Commissioner heretofore quoted from said, in his Report for 1883 :

*“ All these considerations appeal with great force to the liberality of Congress,”* and we add, but more to its sense of justice.

There should be no unkind feeling on the part of the Government or any of its departments towards the men and the corporations causing this saving to its Treasury.

These men should not be met with vituperation or disdain ; there are equities in their position which it would be infamous in the Government to disregard. They should be treated with justice.

The United States invited these men, using the language of Mr. Justice Davis, to aid them in performing a national work. They have done more than their part ; but the Government has failed in the most valuable part of its engagement.

Not only this, but it has changed the contract by the mere might of its legislative power, compelling these men to meet an obligation before it was due. It does not afford these men even the advantage of a respectful or impartial hearing. They are met by the Government and its organs with aspersion and contemptuous abuse.

In addition to retaining all the earnings of the Company from Government transportation upon the aided road, the Government has refused to pay for the services rendered on connecting railroads built by private capital, now amounting to about two millions, the loss of which and payment of interest, and the pledging of securities to borrow an equal amount, subjects the Company to great embarrassment.

The question as to the liability of the Government to pay the Company the money earned on the unaided roads has been determined by the Court of Claims, and the judgment of that Court has been affirmed by the Supreme Court of the United States. The Court, in that case, speaking through Mr. Justice Woods, said :

The subsidy bonds granted to the Company being granted only in respect to the original road, are a lien on that portion only ; and the five per cent. of net earnings is only demanded on the net earnings of said portion.

And, citing from the opinion of Mr. Justice Bradley in a previous case, the following :

With this decision in view, it would be impossible to hold with any show of reason that the compensation for services rendered the United States, which, by the same section, is required to be applied to the payment of the same bonds, included compensation for services rendered by a road the construction of which had not been aided by the issue to the Company of Gov-

ernment bonds. As the contract between the United States and the Railroad Company, contained in the Acts of July 1, 1862, and July 2, 1864, has been interpreted by this Court to authorize the retention by the Government of compensation for services only on the road which the United States aided in building, the construction which the appellant seeks to put upon the second section of the Act of May 8, 1878, would not only render that section a breach of faith on the part of the United States, but an invasion of the constitutional rights of the appellee. We are bound, if possible, to so construe the law as to lay it open to neither of these objections. The construction contended for by the appellee preserves the good faith of the Government.

But notwithstanding that decision, although rendered at the October term of 1885, the Government still refuses to make payment to the Company for the services performed on the unaided road, and still retains in its Treasury nearly \$2,000,000, on which the Company is losing the same rate of interest it is charged by the Government, \$120,000 per annum.

There is no reasonable pretext for the Government refusing to obey the judgment of the highest Court.

It has drawn from the Central Pacific every dollar which it is by law authorized to receive, and its refusal to accord to the Central Pacific its rights, as declared by the highest tribunal of the country, is an act unworthy of any civilized government. It has used its power to make a forced loan, and to retain the property of a citizen ; as was said by Mr. Justice Bradley, it has asserted the principle *that might makes right*, and is guilty of acts of oppression that we should condemn, but not wonder at if performed by the authorities of a petty Central American State or by a ruler in Algiers.

## VI.

### DIVIDENDS.

The Commissioners are charged to inquire whether any dividends have been unlawfully declared by the Directors, or paid to the stockholders of such Company, and if so, to what extent, and whether the amount thereof may not be recovered from the Directors unlawfully declaring the same, or the persons who have unlawfully received the same.

As an original proposition, it would seem as if this was a

matter that rested between the stockholders and the corporation, and not between the Government and the Company.

But the opinions of the Supreme Court of the United States, in the case of the *United States vs. The Union Pacific Railroad and others*, (98 *U. S.*, p. 569,) decides :

That the United States has two distinct relations to the Railroad Company, viz. : the legislative and visitorial power of the Government creating the corporation, and the relation growing out of the contract formed on the charter and its amendments.

The suit in that case was brought under the statute of March 3, 1873, and asked for a decree in favor of the Union Pacific Railroad Company, for money due for capital stock, for money or property received from it on fraudulent contracts, and for money or property which ought, in equity, to belong to the Company.

It was held that the bill exhibits no right to relief on the part of the United States, founded on the charter contract ; that the Company has constructed its road to completion, keeps it in running order, and carries for the Government all that is required of it. It owes the Government nothing that is due, and the Government has the security which by law is provided.

Such is the position of the Central Pacific Railroad Company towards the Government at this time. In its relation of debtor and creditor, the United States has that security upon the property of the Company which it demanded. Nothing is now due or payable ; and it has no concern with the disbursement of the earnings of the road, until some default occurs in the payments which are fixed by the contract, or in the forced changes thereto made by statutes.

It will be remembered that the Central Pacific Railroad Company was not completed on the proceeds of the bonds furnished by the Government. That aid, granted by the passage of the Act of 1864, if disposed of at that time, the price of gold being 2.90, would have yielded but \$9,605,407 ; but, as after the close of the war, the credit of the Government improved, and by selling the bonds to the best advantage that the haste in which the road was constructed enabled it to do, something over twenty millions was realized, which was less than two-fifths of the cost of the road from Sacramento to Ogden. But, after all,

the assets which the Central Pacific had for the completion of the aided road, including the proceeds of such portion of its stock which had been sold, were, as we have heretofore shown, entirely insufficient; it was heavily in debt, which it could not have retired if it had been pressed to do so at that time.

In the course of the investigation a witness was asked by one of the Commissioners: What effect would it have had on the Central Pacific Railroad Company's property, if, instead of dividing eighteen millions, between 1877 and 1884, among its stockholders, it had been applied to bettering the condition of its road, and extending its earning capacity? Do you not think, that if this had been done, the road would have been in better shape to repay its debt to the Government than it is now? That is the position assumed by the Commission on behalf of the Government, and may be answered here: The Central Pacific has discharged all its financial obligations to the Government as they arose. It is not in default. It has rendered to the Government everything the contract required in keeping its road in good condition, in yielding it to the use of the Government whenever demanded. It has paid the Government all that it agreed to pay, all that has been extorted from it by legislative hostility in adding to its contract burden; and the Government having provided the manner in which the principal and interest of the bonds should be paid, must take its satisfaction in that way. The mortgage, which the Act of 1862, Sec. 5, says should *ipso facto* exist in favor of the United States on the issue and delivery of the bonds to the Company, is not upon the tolls, income, rents or profits of the Company, except to the extent of five per cent. of its net earnings, but is "on the whole line of railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued."

In the mean time, the road belonging to the corporation, it has a right to divide from time to time among its stockholders all its surplus earnings—all the earnings not required for the performance of its contract, or the law which impairs that contract; and the Act of 1862 recognized this right, up to ten per cent. per annum, as a remuneration to the stockholders.

But the Central Pacific Railroad Company, from its incorporation to 1884, paid more than the amount mentioned by the Examining Commissioner. The total payments were \$34,308,055, or about

2.65 per cent. per annum. Of this amount, ten millions were earned from a profit on leased lines, and about four millions from other non-aided roads not included in the leases, and about twenty millions from the aided roads during the mining prosperity in Nevada, and before its earnings were crippled and interfered with by the competitive lines subsidized by the United States, and during the time that the Government was unable to divert its business from it to an unaided line. But for those lines, one of which the Central owners, for their own protection, were forced to purchase and complete, the financial ability of the Central Pacific to comply with the demands of the Government would have been essentially different from what they are now.

It will not be denied that those who put their money into this enterprise were entitled to large dividends for the risk that was incurred.

He would have been a bold man who had predicted, when Sherman was crossing Georgia, and when the Central Pacific was trying to scale the Sierra Nevada Mountains, that any person who invested in the stock of the Central Pacific would ever again see his money, leaving out of question the risk which each subscriber or purchaser took of being liable for the debts contracted by the Company to aid in the construction prior to the receipt of the bonds of the Government, or the sale of its own bonds.

As was said by Senator Trumbull, in the debate preceding the passage of the Act of 1864 :

All that Congress proposes to do is to do enough and only enough to induce capitalists to build this Pacific Railway. *We shall be indebted to them when they do that.* \* \* \* All we want is to obtain the construction of this road ; that is what is of national importance. \* \* \* Sir, this is not an ordinary enterprise. The Senator says large inducements are held out. Why, sir, it is a great undertaking. It is for the building of a railroad through a wilderness country and over mountains where, unless there is some inducement, capitalists will not be likely to construct the road. \* \* \* It is a great enterprise. It is great, certainly, in one particular. *It is great in the hazards which are run by those who may embark in it.*

Mr. Wilson said :

*I want to be a liberal in money.* \* \* \* *If, by the liberality of this Government, either by money or land, we can induce capitalists to put in*

*the money necessary to complete the road, we shall have achieved something for the country.*

Mr. Washburne said, in the House of Representatives :

I do not believe there is one man in five hundred who will invest his money and engage in building this road as the law now stands, and we must, therefore, hold out inducements for them to join in the undertaking. We must grant the facilities which are needed. \* \* \* We want this road, stretching from the granite hills of New-England to the golden sands of California. When completed, it will far outshine in grandeur and usefulness the famed Appian Way. It will be the greatest and most useful work done by man.

The \$2.65 per annum, which the dividends to stockholders averaged, does not cover the whole time in which their money was invested, and it is entirely fair to calculate that the average returns would not be over two per cent. per annum.

But can the Government with any reason complain of the returns made to the stockholders, when contrasted with its own dividends upon the bonds which it has advanced to the Company and the interest that it has paid ?

The advances to the Central and Union Pacific Railroad Companies are of the par value of . . . \$55,092,192 00

It has paid for interest up to the first of January,

1886, for the Union Pacific, \$29,043,327 21

For the Central and Western, 29,299,156 21

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58,342,483 42

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\$113,434,675 42

It has received from the Central Pacific, for five per cent. of the net earnings, from 1869 to June 30, 1878, . . . . .

1,871,430 00

It has received one-half transportation charges on aided lines of the Central Pacific, from 1867 to June 30, 1878, . . . . .

1,745,598 47

And since the last mentioned date the payments under the Thurman Act requirements have been sufficient to increase the amount to . . . . .

10,427,238 11

And this amount is increased by the two millions due to the Company for services on unaided lines, which, as the debtor is ex-

ecution proof, may, for the purpose of this statement, be reckoned as a payment.

It has saved, as previously shown, in the transportation of freight, troops and passengers, over one hundred million dollars.

Saved in transportation of United States Mails for the same sixteen years, \$39,364,273.25—making a total of \$154,586,885.78.

In addition to this saving of money it has, by the building of these roads, pacified the Indians along the line, so that some of its forts have been abandoned and its troops withdrawn ; and what is of more consequence than the amount that has been received or retained, or will be retained in the Federal Treasury is, that the settler can now sow and reap without incurring the risk of an attack from hostile Indians, and can return from his day's labor without finding his home in ashes and his wife or children murdered or brutally outraged ; and the lives of the young men previously sent to garrison the frontier forts are no longer the prey of the tomahawk or bullet of the savage. And in addition, when occasion arises for moving the troops of the United States, instead of marching twenty miles a day, they are now moved five hundred miles in the same time.

Quoting the language of General Sherman, in his report for 1883, p. 46 :

These roads enable us to send soldiers to threatened points at the rate of five hundred miles a day, thus overcoming the space in one day which used to require a full month of painful marching.

And by the building of these roads and those feeders concerning which so much fault has been found, joined to its eastern connections, the entire army of the United States can be moved to any point within its territory inside of a week of the time that the order for its transportation is given.

If we review the history of the world, if we read Creasy's account of the fifteen decisive battles, from Marathon to Waterloo, and learn how the destinies of nations have been affected, and civilization advanced or retrograded, and maps changed by delay in the movement of armies, can we imagine that any nation, ancient or modern, would have grudged the little aid loaned by the United States to these subsidized roads to produce such a result, and

which has been repaid one and one-half times within twenty-one years?

In the chronicles of the reign of Elizabeth, we are told that when her Council met to determine how the attack of the Spanish Armada should be repulsed, it was proposed to prevent the landing of the troops of the King of Spain by a muster of all the inhabitants of England at a given point. Sir Walter Raleigh, who took part in that discussion, said that such a measure was not feasible; that if the fleet composing the Armada appeared off the Lizard, and it was feared that their landing was to be prevented at that point, they could, in six hours sailing, make a landing off Portland, but it would take six days marching to move troops between those points.

In the last report made by General Sherman, as General of the Army, (Report of 1883, p. 5, *et seq.*,) he says :

I now regard the Indian as substantially eliminated from the problem of the army. There may be spasmodic or temporary alarms, but such Indian wars as have heretofore disturbed the public peace and tranquillity, are not probable. The army has been a large factor in producing this result; but it is not the only one. Immigration and the occupation by industrious farmers and miners of the lands vacated by the aborigines, has been largely instrumental to that end. *But the railroad*, (the italics are the General's,) which used to follow in the rear, now goes forward with the picket line, in the great battle of civilization with barbarism, and has become the greater cause. I have, in former reports, for the past fifteen years, treated of this matter, and now, on the eve of withdrawing from active participation in public affairs, I beg leave to emphasize much which I have spoken and written heretofore. The recent completion of the last of the four great trans-continental lines of railway has settled forever the Indian question, the army question, and many others which have heretofore troubled the country.  
\* \* \* I regard the building of these roads as the most important event of modern times, and believe they account fully for the peace and good order which now prevails throughout our country. A vast domain, equal to two-thirds of the whole United States, has been thus made accessible to the immigrant, and in a military sense, our troops may be assembled at strategic points, and sent promptly to the place of disturbance, checking disorders in the bud.

General Grant, when Acting Secretary of War in 1867, said in his Report for the fiscal year 1867-68 :

During the last summer and summer before, I caused inspections to be made of the various routes of travel and supplies through the territory between the Missouri River and the Pacific Coast. The cost of maintaining

troops in that section was so enormous that I desired, if possible, to reduce it. This I was enabled to do, to some extent, from the information obtained by these inspections ; but for the present the military establishment between the lines designated must be maintained at a great cost per man. The completion of the railroads to the Pacific will materially reduce the cost, as well as the number of men to be kept there. *The completion of these roads will also go far toward a permanent settlement of our Indian difficulties.* There is good reason to hope that negotiations now going on with the hostile tribes of Indians will result, if not in permanent peace, at least in a suspension of hostilities until the railroads are pushed through that portion of the Indian territory where they are giving the most trouble. (Report of Secretary of War, 1867-68, Vol. I., p. 3.)

Quartermaster-General Meigs, in his report, dated November 8, 1865, (see Report of the Secretary of War, 1865-66, Vol. I., p. 113,) commenting on the cost of transportation over the Plains, shows that a bushel of corn cost—

\$2.79 at Fort Riley.  
 9.44 at Fort Union.  
 5.03 at Fort Kearney.  
 9.26 at Fort Laramie.  
 10.05 at Denver.  
 17.00 at Salt Lake City.

He states that—

The cost of transportation for military stores westward across the Plains by contract during the fiscal year ending June 30, 1865, amount to \$6,338,856.37.

“This expenditure,” the Quartermaster-General continues, “would be reduced by the opening of railroads, by a sum which would aid materially in paying interest upon the cost of their construction,”

At the same time, the cost of transportation of a pound of corn, hay, clothing, subsistence, lumber, or any other necessary of the troops, from the base of supplies at Fort Leavenworth, was as follows :

To Fort Riley, per pound,	.	.	2.46	cents.
“ Fort Union, “	.	.	14.35	“
“ Fort Kearney, “	.	.	6.44	“
“ Fort Laramie, “	.	.	14.10	“
“ Denver, “	.	.	15.53	“
“ Salt Lake City, “	.	.	27.84	“

Supplies in those days had to be carried with the troops, and could not be obtained on the line of march. The maintenance of marching bodies of men was thus greatly increased as they continued westward. The settlement and development of the West, consequent upon the completion of the railroad, enabled the army to purchase its supplies near at hand, at a cost in which transportation bore no material part.

The cost of the transportation of grain alone, used by the army on the Plains in 1865, was \$3,323,829.37. (See Report of Colonel S. L. Brown, Division of Regular Supplies, in Report of Secretary of War, 1865, Vol. I., p. 251.)

The Quartermaster-General, in his report for 1866, page 302, states, on this subject :

The supply of the posts on the Plains with forage has always imposed a heavy financial burden upon this department. The Missouri River has for years marked the limit of the cereal-producing region of the West, and grain transported from that point, when it reached the garrisons stationed near the Rocky Mountains, had reached an enormous price. The cost of foraging one horse equalled the cost of feeding a dozen animals in the States.

The record kept in the Comptroller's Department of the Central Pacific shows that a single Indian war has cost more than the whole amount of bonds issued to the Pacific Railroads.

The Pacific Railroad Committee of the Senate, in a report dated February 19, 1869, made the following statement on this subject :

What is the cost of our Indian wars as compared with the cost of the Pacific Railways, which will speedily end the Indian wars? A compilation from the official records of the Government shows that these wars for the last thirty-seven years have cost the nation twenty thousand lives and more than \$750,000,000. In the years 1864-65 the Quartermaster's Department spent \$28,374,288 for military service against the Indians. \* \* \* The Chairman of the House Committee on Indian Affairs estimated recently that the present current expenses of our warfare with the Indians was one million dollars a week—\$144,000 a day. (40th Congress, 3d Session, Senate Rep. Com. 219.)

The statesmanship that incurred the liability to induce the Pacific Railroad Companies to build the highway that has saved so many lives and so much treasure needs no defence.

The men who voted to use the lands and credit of the Govern-

ment for this purpose were worthy successors of those who pledged the resources of the nation for its independence ; but the historian who shall relate the wisdom shown by the people's representatives in obtaining this highway, resulting so much to the grandeur and dignity of the nation, will have to fortify with incontrovertible evidence his further statement that the whole power of the Executive and Legislative branch of the Government was used within a few years after the completion of this great work to persecute and harass the men who, in the language of the Senator from Missouri, "*had performed the greatest achievement of the human race on the earth.*"

While Generals Grant and Sherman were convincing our brethren of the South that successful resistance to the perpetuity of this Union was impossible, these railroad builders were at the same time bending their matchless energy to cement the fruits of the victories of these generals, by uniting the remote sections of our continent, and subduing to the purposes of civilization vast ranges that had been trodden only by the savage and the buffalo. Look westward of the Missouri, and you see the wilderness receding fast before the advancing tide of life and civilization, vast harvests waving round the blackened stumps of a pathless forest, and cottages, barns and mills rising amidst the haunts of the wolf and the bear.

By their subsequent efforts in building railroads, running north and south, they have brought the people of the Northern and Southern States into closer and more fraternal relations than they ever before knew.

But at the time of which we were speaking, when they were serving the political purposes of the Government, in connecting the Missouri with the Pacific, and making one-half of the territory of the United States habitable, they were also solving the engineering doubts, so often expressed, as to the physical ability of constructing a railroad over the Sierra Nevada Mountains.

They were opening a safe and speedy highway across this continent, that might be used between the Old World and the Empire of China, with India, Japan, New-Zealand, the continent of Australasia, and the many fertile isles of the South Pacific.

Some of the fruits of their peaceful victories may be seen at the wharves of San Francisco, on the arrival of one of the huge

steamers that ply between that port and Hong Kong or Yokohama. You will see, alighting from such vessels, men bearing authority from the Emperor of China to represent his interests with the Governments of Washington, London or Paris. You will see British diplomats, who in fifteen days will be in conference with chiefs in London on the affairs of the English Colonies in the Pacific.

You will see officers of the French and German navies, who have been summoned by their respective Ministers of Marine to report at headquarters. You see unloading from the steamers the products of China and Japan—tea, silks and various manufactures of Asiatic labor—to be distributed between San Francisco and the Mississippi. All these results, emanating from the indomitable courage and perseverance of these men, who were not slothful in business, but were fervent in the spirit of their great works—serving the Lord by their grand achievement.

But if you would know more of the benefits that have been derived from the construction of this *first overland road*, you must pass over it.

You will see trains of cars carrying emigrants who are seeking homes on the fertile lands of the Far West.

You will see that these travellers are well cared for, and are contented, that the railroad companies have devised a car in which they may journey to their destination in health and comfort, and then contrast their lot with those of the emigrant crossing the same country for the twenty years preceding the completion of these roads.

As Mr. Sargent so graphically said from his place in the House of Representatives :

“ With such a road you avoid Indian wars. You would save the lives of citizens, who now take their weary way across the Territories, falling victims to savage onslaught. *You can follow the emigrant trail from Missouri to California and never lose your way, for the route is broadly marked with the bones of men and beasts, of broken wagons and abandoned property.*”

The “ Tragedies of the Plains,” as they were termed by early California writers, may be referred to in describing the hardships and cruel treatment of emigrants from the frontier States to California before the construction of these railroads.

One case was reported of a party, including women and chil-

dren, whose mules had been poisoned by the Indians, and who were slowly toiling westward, carrying such stores as they could pack, until they were rescued by the wagons and teams of other emigrants overtaking them.

Another, of an entire party being killed by the Indians, except a mother, and son of about ten years of age ; she ended her life with a pistol shot to avoid a worse fate, the boy escaping to tell the story.

Another, of the destruction of an entire family, except two women, mother and daughter, who were taken and kept prisoners for several years, when they escaped to the trail, and were brought into one of the California settlements, both having during their imprisonment borne children to their captors.

Instances of shocking events of this character were of such frequent occurrence, that it will take more space than we can spare to enumerate even a small portion of them.

Disease wasted the lives of many of these unfortunate emigrants ; scarcity of water, food of poor quality and insufficient in quantity, tending to fill many graves. Families might be seen camped in and under their wagons, all laid low with fever, and having but a scant supply of water to cool their heated bodies.

A touching story was told in Sacramento in 1850. An emigrant wagon was being used as a place of shelter by a man and woman on the levee of that city, their team being picketed near by ; a fire had been made to cook their evening meal ; the woman sat by the fire, and the tears were trickling down her cheeks ; in answer to an inquiry as to the cause of her grief, she replied : " When we left Missouri we were four, but two little graves on the Humboldt contain my two little girls—my only children."

The condition of emigrants, then and now, would be sufficient warrant for the Government aid, loaned or given, to accomplish such a result, and which some of the legislators who voted for the bill predicted. Shortly after the road commenced to be operated as a trans-continental line, a passenger on the train of the Central Pacific, going eastward through the Humboldt Valley, might have been seen sitting on the platform of a car. The day was hot and the road very dusty, so that he was soon covered with the alkaline soil of that region. Still, for some hours, he kept his place, and, being asked the reason, said : " In the last three hours

I have ridden over a space that some years ago, when on my way to California, I traversed with my wagon and poor tired mules in three weeks. Some days," he said, "we did not move at all, and generally not more than four miles in a day. We were trying to get the animals in condition that they might pull the wagons over the 'Sierra Nevada.'"

Are not the men whose energy has accomplished so much, who performed this great work in so short a time, as if by magic, who have thus conduced to the convenience, safety and commercial advantage of all the world, and more especially of our own citizens, entitled to some favorable consideration at the hands of the people's representatives in the determination of the present controversy? And are they not entitled to such dividends or pecuniary reward as results from their skill in handling the enterprise?

They will receive no more in the way of dividends; the competitive lines aided by the Government will prevent that.

## VII.

### COST OF THE WAR IN UTAH.

The cost of the war in Utah was frequently alluded to in the debates preceding both the passage of the Act of 1862 and of 1864.

A search of the records of the War Department does not disclose any tabulated statement giving the amount actually paid out, but a recent letter from the Acting Secretary of War states that the following articles were furnished by the United States for the use of the expedition to Utah:

22 Ambulances.

29 Light Wagons.

988 Baggage Wagons.

6,447 Mules.

254 Horses, in addition to the horses furnished for the mounted corps, and for the transportation of supplies for the army.

And for the depots at Fort Kearney and Fort Laramie, on the route, 3,938 wagons, 33 mules and 49,896 oxen.

The contract of Messrs. Russell, Majors & Waddell, dated January 16, 1858, shows the following rates per 100 pounds per

100 miles, for the transportation by them of freight for the United States, varying with the season of the year :

January and February, .	\$4 00.
March, . . . . .	2 90.
April to September, .	1 80.
September, . . . . .	2 20.
October, . . . . .	3 00.
November and December, .	4 50.

Freight not exceeding 10,000,000 pounds, and an increase of 25 per cent. to be allowed on freight from 10,000,000 to 15,000,000 pounds, and 35 per cent. for quantity beyond 15,000,000 pounds.

It will not be of practical utility to make a detailed estimate of the value of the outfit above mentioned, nor have we sufficient information to state the total amount paid for transportation. Soon after the termination of the campaign it was estimated at from twelve to fifteen millions of dollars, and army circles have received as true the statement that the entire expense to the Government was not much less than thirty million dollars more than the amount of bonds loaned to the Central and Western Pacific.

This expedition made the fortunes of the Mormons ; they sold for the use of the troops their spare agricultural products at enormous prices, and acquired the outfit of the expedition with but small outlay. The financial result to the Mormons induced Brigham Young to say that he had made war successfully on the United States.

At this time, of course, such an expedition is entirely unnecessary, but without the building of the Pacific Railroads the control of the Mormons would have been as costly as of the Indians.

## VIII.

### CONTRACTS LET TO CHARLES CROCKER & Co. AND THE CONTRACT AND FINANCE COMPANY FOR THE CONSTRUCTION OF THE CENTRAL PACIFIC RAILROAD FROM SACRAMENTO TO PROMONTORY.

The officers of the Central Pacific Railroad Company have been unsparingly denounced for their action in letting these contracts ; but it will be seen, on a fair review of their situation at that time, it was the wisest and most advantageous thing that

could be done for the interests of the corporation and the Government, and that it was the only practical way in which the road could then have been built.

The immigration to California commenced in 1849, and for the succeeding five years it was peopled with a rapidity unknown in history. California became a State on the 9th of September, 1850, so that at the time of the passage of the Act of Congress of 1862, it had been within the Union a little short of twelve years.

The promoters of the Central Pacific were, speaking comparatively, old residents, in a country which had had an American population for less than thirteen years. Large fortunes at that time had not been accumulated, and they were acquainted with all the men in California who had money to invest or to loan. The banking capital, of course, could not be great. There were not a great many men who had any surplus not required for daily use in their business. The directors would willingly have let the contract to parties not interested in their corporation if such persons could have been found. Or the corporation would have constructed the road within its own organization if it could have commanded the necessary funds. For the lack of finding these, Mr. Crocker proposed to take a contract for the construction of the first eighteen miles of the road, and for that purpose resigned his seat in the Board of Directors, to which he had been elected at its organization, he believing, and the directors agreeing, that he would be more useful to the purposes of the Company in the speedy construction of the road, as a contractor than as a director.

But from the handling of the first shovelful of earth at the City of Sacramento until Mr. Crocker completed his labor as a contractor, at or near the eastern boundary of the State of California, it was not contemplated that any profits should be made in the work of construction. The idea was to get the road through in the quickest possible time, so as to give the Government its use as early as possible, and that the promoters should, if possible, retain their interest in the corporation at the time the work was completed.

It is in evidence that the firm of Charles Crocker & Co. was formed, but at such formation Mr. Crocker had no partner. His intention was, as he proceeded with the work and demonstrated

its practicability, to invite others to join him ; but in this he appears to have been disappointed. His financial position as contractor was not sufficiently inviting to attract an associate with capital.

When the work on the mountains commenced, when, in the language of the Superintendent of Bridges, the snow had to be removed to a depth of twenty to thirty feet, so as to find a resting place for the timbers used for trestle and bridge purposes, that they might be stored upon the ground that had been cleared from snow and not be liable to be washed away by a thaw, Mr. Crocker found that he had probably assumed a task beyond his financial strength. So we find him complaining of his burden to the directors. It would seem that the work of grubbing and clearing the line of track, removing trees and stumps at a cost of from two to five thousand dollars a mile, so that the embankment of the railroad could be made upon it, threatened to engulf him. And we can imagine his cry to the other promoters of the road : "save me, or I perish."

Mr. Stanford testifies :

But it very soon became apparent that no ordinary rules that would govern between contractors would answer the purpose of the rapid construction of the road ; that sacrifices must be made which the Company could afford, but a contractor, looking to profits out of his contract, could not. Mr. Crocker became apprehensive about his personal liabilities.

He was then told to go on with the work without regard to the terms of the contract, and that the directors would "see him through." Some portions of the road on the western side of the mountains had been let to small contractors. Some had performed their contracts ; some had not. Mr. Crocker assumed the contracts of those who were derelict, and did the work at the price at which it had been let. But it was evidently impossible to obtain contracts from responsible people for building over the mountains ; and if such contracts had been let, it would simply have resulted in delay and expense to the corporation ; for the contractors could not have performed their agreement. It was a new work. Nothing like it had been seen in this country, or, I may say, in any other. The great railroad building over the Mount Cenis route in Switzerland, and over the Tyrol in Austria, great feats of engineering, as they were claimed to be, and as

they undoubtedly were ; sink into utter insignificance in comparison with the construction of a road over, or I may say through, the Sierra Nevada Mountains. On the Swiss or Austrian roads they are not protected by miles of snow-sheds and galleries ; nor are their mountains terraced from the base to nearly the apex with a series of retaining walls to prevent the avalanches of snow demolishing the snow-sheds, or proving graves for the builders ; for the tracks upon those lines have no such protection. They were but few who believed in the practicability of the work, or who thought it could be successfully carried to completion.

It would have been utterly futile to have attempted to bind any contractor, not interested in the future of the Company, to perform that work. The corporation was not in a position to agree to make payments at fixed dates. Mr. Crocker understood its position. He undertook the work, knowing that he would get his pay just when the corporation could raise it, and not before. No other solvent contractor would have made any such arrangement, nor could any solvent contractor have been obtained to accept the contract which Mr. Crocker undertook.

From sections one to eighteen, that is, from the levee at the City of Sacramento to the 18th mile post, Mr. Crocker undertook to perform the work for \$400,000 ; \$250,000 in cash, \$100,000 in the bonds of the Company, and \$50,000 in stock.

Those who are familiar with the condition of Sacramento in 1862 and 1863, know that the construction of the road for that eighteen miles was very expensive. The testimony of Mr. Davis, an old resident of California, and of late years the President of a Railroad Company, shows what had to be done to build an embankment for the track, and to prevent its being washed away by the overflow of the Sacramento River, after it was built.

The grades of the City of Sacramento, for some distance from the Sacramento River, have been raised about nine feet, so as to bring them on a level with the altitude of the Central Pacific track, which it was found necessary to adopt to keep it above the reach of the high water of the Sacramento River, in the rainy season. In addition, the approaches to the American River had to be protected, so that by the overflow of that river, the abutments of the railroad bridge should not be endangered. So that this eighteen miles could not be constructed from the amount

that was allowed in the contract made with Mr. Crocker ; and it is certain that if he escaped from its performance without loss, he took no profit.

But it is claimed that Mr. Crocker and the directors of the Central Pacific made large profits in building the road over the mountains. It must be admitted that ultimately, after many years of waiting, they did realize some profit from the retention of the stock, which Mr. Crocker took in part payment of his work ; but to make that stock of value they had to spend years to develop business on the road, and to build at their own cost and risk branch roads to bring traffic to the main line.

For the 106 miles, from section 32 to 138, which means from Newcastle to the Truckee River, near the State line, there was paid to Mr. Crocker, as is shown by the books of the corporation, \$8,227,980, which is at the rate of \$77,622 per mile ; and there was also paid to him \$14,657,996 in stock of the Company.

So far as the stock payment was concerned, it cut no figure at the time as an asset for building the road. It could not be sold, it could not be bartered, and was useless as a collateral.

We have it from the evidence of Mr. Stanford, that when the road had been constructed to the State line, the Company had spent all its available resources, and all the securities that could be issued on that part of the work, including the bonds loaned by the Government, and were in debt for obligations incurred upon that portion of the work, and the same result is proved by reference to the statistics now on file in the Treasury Department in relation to the construction of this road.

It is very certain, from the information we have as to the cost and character of the work, the rapidity, and the consequent want of economy with which it was done, that the sum of \$8,227,980 did not cover the entire outlay. The balance was assumed by Charles Crocker and the directors who came to his rescue. The estimate has been made by Mr. Stanford, and no doubt correctly, that the cost of the work done between the 31st and 138th miles for the reception of the track equalled, in day's work, the whole cost of grading a railroad from Truckee to Chicago, a distance of nearly twenty-one hundred miles.

It undoubtedly was the intention, when this contract from Newcastle to the 138th mile was let to Mr. Crocker, that the directors should not be interested in it ; but they were forced to assume

the position they did, and to share with Mr. Crocker what was at that time thought to be a loss on the work. It is gratifying to know that their courageous attitude resulted in their being rewarded with a profit, instead of meeting a deficiency. But when Mr. Crocker's labors were concluded, he and his associates were face to face with a position that called for the assumption of a large amount of indebtedness, which could not at that time be met with the stock of the Company which they held, or with any quantity of such stock.

After the completion of the road, Mr. Crocker deposited the stock which he had received from his various contracts, with the Contract and Finance Company, and it was divided among the stockholders of that Company, subject to the debts he had incurred.

## IX.

### CONTRACT AND FINANCE COMPANY.

The extreme financial pressure, under which the work entrusted to Charles Crocker & Co. was performed, and the difficulty of inducing people of means to become members of a private partnership, led to the formation of the Contract and Finance Company.

It was supposed by the Directors of the Central Pacific, that by granting the contract to a corporation, upon liberal terms, to complete the road from the State line to the connection with the Union Pacific; the owners of capital in the eastern cities might be induced to become stockholders in such corporation, and, in this way, to insure the completion of the work, of which, at that time, the Directors of the Central Pacific had very grave doubts.

It was not, as Mr. Stanford says, a matter of profit to the promoters of the Contract and Finance Company; it was a plan to prevent, if possible, the utter failure of the enterprise.

Mr. Huntington testifies, that in his correspondence with Mr. Hopkins, when the latter asked him how much of the stock in the Contract and Finance Company they should take, he replied: "Take as much as you are forced to, and as little as you must."

At that time, if it could have been done, the promoters of the Central Pacific were entirely willing to yield their interest in the work, if other or more responsible parties would undertake it,

and comply with the terms of the contract made between the corporation and the Government. It was with them more a matter of pride, that the undertaking should not fail by reason of their financial weakness, than any question of profit. It was their last hope, their last resort to invite capitalists to aid in the work ; and it may be truthfully said, that the formation of this Construction Company was quite as much in the interests of the Government as of its promoters ; for, as is shown, the cash payments made to the Contract and Finance Company did not enable it to perform its contract to construct the road from the eastern boundary of California to Promontory by about three and a half millions of dollars.

The Central Pacific Railroad Company could not give to the Contract and Finance Company anything more than it had. It could not in any way injure or militate against the interests of the Government. The Contract and Finance Company must complete a section of twenty consecutive miles or the Central Pacific could not receive the proceeds of the Government bonds for that distance, nor could the corporation issue its own bonds in advance of such completion, beyond the terms of the Act of 1865.

It was bound to return value within the terms of the contract to the Central Pacific, for what was paid to it. But, notwithstanding this contract with which so much fault has been found, it is seen that not the owner of a single dollar was willing to risk it in assuming the responsibility of sharing its supposed profits.

Three of the capitalists of California of that day have given their views and their experience, Mr. D. O. Mills, Mr. Lloyd Tevis and Mr. Horace W. Carpentier. They were all offered an interest in that contract, but they declined, because they did not believe that there was any profit in it, or that the railroad would pay when it was constructed, and because they feared to assume a position that would make them liable for the debts of the railroad corporation as owner of its stock. The feelings of capitalists to the men engaged on this work is expressed in a homely way by Mr. A. E. Davis, himself a railroad builder, that they were thought to be insane. "We thought they were a little off. Yes, sir ; that is what we all thought."

Mr. Huntington states, and as he is supported by the evidence of Mr. Stanford, Mr. D. O. Mills and others, it was im-

possible to induce the capitalists of the money centres of the Atlantic to become interested in that contract. Money was at that time in such great demand that its use commanded high rates. The currency of the country was during the entire time of the construction of this road in a very inflated condition.

The Government was a great borrower. When the Amended Act of 1864 was passed, General Grant had been repulsed at Cold Harbor, and it took 2.90 of the Government paper to buy a dollar in gold; and at the end of the same year the price of gold was \$2.43½. The bonds of the Government issued before the war, which it sold at 22 premium, were selling at about 80. The public debt at the time of the passage of the Act of 1864 was \$1,740,690,489.48, and there was still authority in the Secretary of the Treasury, under the various Acts of Congress, passed up to that time, to borrow a further amount of \$622,284,625.

In California, where the promoters of the Central Pacific had to raise money for the work of construction, money was in great demand. The bonds issued by the State of California, bearing seven per cent. interest, which was promptly paid in gold, were selling at 71½, a discount of 28½ per cent.

The Central Pacific was compelled to pay for all its labor and supplies, purchased in California, in gold. It needed a large amount. Money borrowed from the Atlantic Cities was of necessity in currency. Gold had to be purchased and drawn for from California, thus materially increasing the financial burdens of the Central Pacific. These causes rendered uncertain in the minds of the owners of capital what they would receive in re-imbursement for their investment.

Added to all this was the doubt, that at this time so generally prevailed, whether, if the road was constructed, it could be commercially operated—the doubt as to the existence of fuel along its line. It was known that there was not a single navigable stream from the Missouri to the Sacramento, and for stretches of hundreds of miles there was some question as to whether water could be obtained sufficient and suitable to generate steam on the locomotives.

Futile as was the effort of letting the contract to Charles Crocker & Co., and to the Contract and Finance Company, to relieve the financial pressure on the Central Pacific, it would have been criminally negligent on the part of the directors of that

Company, if they had not resorted to these devices ; especially is this true of the formation of the Contract and Finance Company.

At the end of 1866, as appears in a report made by the Department of the Interior to the House Committee on Pacific Railroads, the Central Pacific had expended in the construction of its road \$12,000,000.

At that time, 74 miles of its road had been accepted by the President, and it received bonds from the Treasury on

7 miles @ \$16,000,	.	.	.	.	.	.	\$112,000
67 " " 48,000,	.	.	.	.	.	.	3,216,000
							<hr/>
							\$3,328,000

It had issued its own bonds to the same amount, netting

.	.	.	.	.	.	.	3,328,000
							<hr/>
							\$6,656,000

These bonds being estimated at 70 cents, the average

of the entire issue produced . . . . . \$4,659,200

The bonds issued by it, on which the State of Cali-

fornia guaranteed the interest, had netted . . . . . 980,000

The bonds received from the City of San Francisco

had produced . . . . . 300,000

The bonds from Sacramento, . . . . . 190,000

Bonds from Placer, . . . . . 160,000

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\$6,289,200

Leaving the balance between this amount and \$12,000,000 to be carried by Charles Crocker and his associates.

On the 25th of October, of that year, there had been

issued to the Central Pacific of the aid-bonds, . . . \$4,922,000

Which had been sold for . . . . . 3,546,478

An equal amount of first mortgage bonds had been

issued by the Company, netting . . . . . 3,546,478

All the money had been spent on the work, and the Company and contractors were heavily in debt. Besides there was a large amount of material on the ocean, in transit from New-York ;

probably averaging at that time not less than \$2,000,000, and the situation is well expressed by Mr. Miller, the Secretary of the Central Pacific, when he said :

When the road was completed to the State line, the Company had expended the proceeds of all the United States bonds it had received, and all the proceeds of all the County bonds, and of all its own bonds it was authorized to issue up to that point, and had a floating debt of over five million dollars.

It may seem at this time a very unimportant announcement to say that this corporation is carrying a floating debt of five millions, but it was a very serious position to be in when it was laying its track along the Truckee River, with its available assets entirely exhausted.

The Contract and Finance Company was incorporated in November, 1867.

An impartial review of the management of the Central Pacific during the construction of its road, and the doings of its promoters and contractors, must concede that the engineering talent, so well and skillfully exhibited, was equalled by the great financial ability displayed in borrowing and contriving the necessary funds for prosecution of the work without delay, and its completion. The figures just presented account, without further explanation, for the imperative necessity of incorporating the Contract and Finance Company.

It was supposed that the terms of this contract would leave a large profit to the Construction Company, but such anticipations were not realized. We have before us its outcome, and we see that the caution of those to whom an interest in that contract was offered was well founded. For Mr. Brown, the Manager and Secretary of the Contract and Finance Company, tells us that after the Company had fulfilled its contract in the construction of the road to Promontory it had spent all its cash assets ; that it was in debt exceeding three and a half millions of dollars, and that the only remaining asset was twenty-three millions of the stock of the Central Pacific Railroad Company.

It is very certain from all the evidence we have that no market could be found for it, and that no considerable portion of it could have been sold for ten cents on the dollar. Therefore, if the Contract and Finance Company had been com-

pelled at that time to meet its indebtedness, it was bankrupt. If a market had been found for this stock at ten cents on the dollar, it would still have been owing about a million and a half of dollars, without any assets of any kind to have met such indebtedness.

Such is the outcome of those contracts which may be said to be historic ; it shows that the corporation and the individuals who are supposed to have gutted, destroyed and crippled the Central Pacific Railroad Company, brought themselves beyond the verge of bankruptcy in fulfilling their conditions.

It is equally true of this contract, as I said before with respect to the contract let to Charles Crocker & Co., that after years of patient waiting in the one case, from 1866 to 1881, and in the other from 1869 to 1881, after from twelve to fifteen years of anxiety and embarrassment, after bearing the burden of millions of dollars of debt without any present means of liquidating in times of bankruptcy or disaster, the stockholders of this Construction Company did realize some profit. But, as actions speak louder than words, and as men's views are expressed in their acts, we have indubitable evidence of what was the value set upon the stock of this corporation in 1871, two years after the Central Pacific Railroad Company had been completed and had been in active operation. For, at this time, when other roads had been consolidated with the aided roads ; when the Central Pacific, by consolidation, was the owner, in addition to the road between Ogden and San José, of a branch and profitable line to Oakland ; of the Oakland and Alameda ferries ; of several hundred miles of the California and Oregon Road, and of the San Joaquin Valley Road from the connection on the line of the Central Pacific at Lathrop to Goshen, we find that the stock owned by Mr. Charles and Mr. E. B. Crocker was sold to Huntington, Hopkins and Stanford, at twelve cents on the dollar, and was sold, not for cash, but on a long credit.

Now the stock belonging to the Contract and Finance Company, twenty-three millions, sold at this time at twelve cents on the dollar, two years after it had completed its contract, would not have sufficed to pay its debt of three and a half millions and the two years' interest which had accrued. But in 1873, two years after this sale and four years after the completion of the road, the purchasers were compelled to return to Mr. Crocker the

stock they had bought from him, because they could not pay for it. It was not, in their estimation, for their interest to endeavor to borrow the money and keep the stock which they had bought at twelve cents on the dollar, even with the anticipation of the dividend of three per cent., which was declared on September 13, 1874.

But we may be answered, that in the mean time, these gentlemen had put a higher estimate on the stock of that Company, by acquiring the stock that was represented in the suit brought by Lambard and others, and in the suit brought by Brannan, for which it is alleged they paid several hundred dollars per share. The settlement with those represented in the Lambard suit was agreed upon in the year 1870, shortly after the completion of the road, and the price was fixed for the stock of Brannan at the same time. By reason of litigation that prevented settlement, it was not paid until some time later.

The plaintiffs in those suits were stockholders in the Central Pacific, and undoubtedly had a right to an accounting. And we may say it was unfortunate for the interests of the directors of the Central Pacific that it was not then made. That it was not, was because the directors could not afford, in view of their then financial embarrassment, to render an account. They had but one thing to conceal at that time : Not their wealth, not any money that they had made in the performance of their duties as directors or trustees ; but, in view of their great indebtedness at that time, they could not afford to show their poverty. It was the current belief, that out of the twenty-seven millions of bonds which had been issued by the Government, that out of the grants of land which, as Mr. Bogy, of Missouri, said were not worth a cent without a railroad, that out of bonds issued by the corporation, secured by a first mortgage upon its property, and from the aid granted by the counties along its main line in California, the directors had made enormous fortunes. And it was this popular delusion that gave them credit, and permitted them, without security, to float and carry the many millions which they then owed. They could not afford to open their books to complaining stockholders. It would have been ruin to them to have then disclosed to their creditors, that to meet the indebtedness they had been compelled to incur or to assume, for what the road had cost above the proceeds of their own

bonds, and of the bonds in aid of the work, they had only the unavailable assets of the stock of the Central Pacific, which they could not sell, to realize the amount of such indebtedness. Such exposure would have resulted in their undoing ; and, therefore, it was wisdom on their part to incur further indebtedness for the moneys required to settle the demands of these stockholders.

But, certainly, the Government is in no condition to complain of these contracts, or of the stock that was issued in their performance. As we have said before, the Government has all that it bargained for. It has the road as security for the debt due to it, if there is any, subject to the lien agreed upon in the amended contract of 1864. It has had the use of the road, and has already saved by its completion up to the present time fifty per cent. more than it will be required to pay in the discharge of principal and interest at the time of the maturity of the bonds. It had no concern with the stock of the Company. It found the Central Pacific an existing corporation. It enlisted its aid for the performance of a national undertaking. There never was any doubt but at the completion of that undertaking the property of the corporation would be owned by its stockholders, subject to its indebtedness.

And that is just the position to-day. The promoters of the road were enabled to sell but little stock. Most of the stock that was subscribed and paid for was by them. The few who came in to help them, who faltered by the way, and who were ready to lay down their burden, were relieved by these promoters ; so that when the road was finished, with the exception of the stock owned by Lambard and others, much of which, it may be said, was traded for services, and did not bring a dollar into the coffers of the corporation, the promoters and directors of the Company were the owners of all its stock. There has not been a share of stock illegally issued, nor a single share for which the corporation did not receive full commercial value at the time it was issued.

But it may be further said, that these men, being the owners of all the stock, and, as such, the owners of all the property of the corporation, it could make no difference to any one whether the symbol of their ownership was expressed by the issue of certificates for one thousand shares, or for a hundred thousand shares, or for a million. Those who dealt with them in relation to the transfer of

such stock would determine how much property was represented, and how much each share was worth. So we find, under the Act of 1862, the Union Pacific was authorized to issue a certain number of shares, of the par value of one thousand dollars each ; but by the Amendment of 1864, they were authorized to issue the stock in shares of one hundred dollars each, instead of one thousand, and that the shares should be one million in number, instead of one hundred thousand.

The number of shares of stock issued by a corporation, with the sanction of those who are its owners, cannot make any more difference than if a man bought a thousand acres of land, and desired to have the title transferred to him by one hundred deeds, each conveying ten acres, instead of by one deed for a thousand acres.

But, as was said by Mr. Justice Miller in *The United States vs. The Union Pacific Railroad Company*, (98 *U. S.*, 619 :)

It is difficult to see any right which the Government has as a creditor, to interfere between the corporation and those with whom it deals. It has been careful to look out for itself in the making of the contract. It has the rights which that contract gives. What more can it ask ? \* \* \* The Government made its contract, and bargained for its security. It had a first lien on the road by the original Act of Incorporation, which would have made its lien safe in any event. But in its anxiety to secure the construction of the road, an end more important to the Government than any one else, and still more important to the people whom it represented, it postponed this lien to another mortgage, that means might be raised to complete it.

The Government surely cannot sustain any wrong by the number of shares of stock issued. The corporators were entitled to all the surplus earnings of the Company, and whether it is divided into ten, one hundred or one thousand parts, certainly does no harm to the creditors, who do not share in the distribution. But if it should be found, that after allowing the equities claimed by the Central Pacific, concerning which Congress has directed the Commission to examine and report, that any material sum is due to the Government, and it should pay off the original lien and become the owner of the property, the stock not being entitled to its protection, would in no way determine or interfere with its right to the ownership of the property.

## X.

THE PURCHASE AND BUILDING OF ROADS CONSOLIDATED WITH  
THE CENTRAL PACIFIC, OF CALIFORNIA.

The Central Pacific, with the assent of Congress, assigned its right to construct all that portion of the aided road, from the City of San José to the City of Sacramento; but the assignees were unable to perform the work, and after there had been several failures of contractors, the promoters of the Central Pacific arranged with the assignees to turn the organization over to them, and they finished and equipped the road in accordance with the requirements of the Act of Congress.

At the time of the connection with the Union Pacific, the aided road consisted of a line from the City of San José, fifty miles south of San Francisco, to Promontory.

The trans-continental business, both in freight and passengers, could reach San Francisco by a transfer at the City of Sacramento to the steamboats then plying the waters of the Sacramento, and owned by the corporation known as the California Steam Navigation Company; or, being carried to San José, they could be transferred to the San Francisco and San José Railroad Company, and would reach San Francisco, a distance of 177 miles, which route, from San José to San Francisco, was impeded by a grade of 92 feet to the mile.

To utilize the construction of the Western Pacific, it became necessary to connect it with the City of Oakland, and from there use the ferry to San Francisco.

The distance from Niles to San Francisco, 30.2 miles, makes the transit in this way, 139.57 miles, against the distance by way of San José, 177 miles, making a saving by this route over that by San José, of thirty-six and a half miles, and avoiding the heavy grades on the latter. To accomplish this result, and avoid paying ferriage on the business of the aided road, it was necessary to purchase the lines of the San Francisco and Oakland, and the San Francisco and Alameda Railroads and their ferries.

When the main line was finished, it afforded but little convenience to people, either in the northern or southern parts of the State of California; to afford the proper accommodation, to

increase its revenue, and to invite immigration and settlement, it was necessary that feeders should be constructed. Accordingly the promoters and stockholders of the Central Pacific organized the Company called the San Joaquin Valley Company, for the purpose of building a line of railroad from Lathrop, a point on the Western Pacific Railroad, about eight miles south of Stockton, to Goshen, in the County of Tulare, a distance of 146.3 miles.

This road was built by the Contract and Finance Company with money furnished by the stockholders of that Company, and was paid for in the bonds and stock of said Railroad Company.

It may be said of this contract as of many others that were let to the different construction companies in which the Directors of the Central Pacific have been stockholders, that they built the road with moneys furnished by themselves, and had the road for their outlay. In other words, they paid to the Construction Company the bonds and stock of the railroad so constructed, and waited until such time as they could develop sufficient business on the road built, to induce the public to buy the bonds or the stock. If the country through which the railroad ran developed sufficient business, then the project was a success; if it did not, then the operation was a loss. These gentlemen took all the responsibility; any loss occurring was necessarily theirs, and of right the profits belonged to them.

But it is said that they violated a well known rule of equity in dealing with themselves, that they were trustees, and that they were representing both sides of the contract.

The answer is, that they did not find anybody else to deal with. They could not find any one who would take the chances of building a road through what was then an almost uninhabited country, and accept the bonds and stock of the road in payment. And when it is said they were trustees, if they did occupy such relation, it was merely technical, for they represented only their own interests on both sides, there being no one else concerned in the transaction. They became the incorporators of the Company that was to build the road, subscribed for its stock, and were the only subscribers. Therefore it is difficult to see how any one was wronged by their action. The rule of equity invoked, which has its origin in the injunction, no man can serve two masters, certainly did not apply to them, because they were acting in their own interest, and were not charged with the duty of caring for others'

rights, there being no other persons interested in the subject matter.

To perfect the railroad system of the West Coast, for military and postal uses, to serve the people in the northern part of the State, and to make a connection at Portland, which became necessary for the protection of the Central Pacific after aid had been given to the Northern Pacific, the promoters of the Central Pacific incorporated the California and Oregon, to run from a point on the main line of the Central Pacific, known as Roseville, to the northern boundary of the State of California, with such extension into the State of Oregon as its directors might afterwards deem proper.

By an Act of Congress, entitled "An Act to grant lands to aid in the construction of a railroad and telegraph line from the Central Pacific in California to Portland in Oregon," there was granted to this Company, to secure the safe and speedy transmission of the mails, troops and munitions of war and public stores over said line of railroad, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, ten on each side of said railroad line.

The directors of this Company proceeded with the work of construction to the State line, expecting to connect with the road of the "Oregon and California Company," which was commenced at the City of Portland, and was intended to connect with the Central Pacific at the California line; but owing to the failure of the original promoters and their successors it was not completed until it came into its present ownership. This work of enormous difficulty and cost has at last been achieved, thus giving connection by rail between the Cities of San Francisco and Portland, and direct railroad communication between Puget Sound and the City of Mexico.

We do not want to interrupt this branch of the argument by indulging at this moment in reflection on the benefit and advantage of the efforts of these men to the United States. It is just twenty-five years since the passage of the Act of 1862, when thinking and intelligent men scoffed at the idea that a road could be constructed or operated over the wastes between the Missouri and the Sacramento. But the efforts of these men demonstrated

that such a thing was practicable ; and there are now five separate lines connecting the Atlantic with the Pacific.

But in addition, the efforts of the same men have served to connect our great forests and ship building facilities of the Northern Pacific with the former capital of the Aztecs. The efforts of these men have brought the Capital of the Nation very close to the Territory of Alaska, and proved the wisdom of the purchase recommended by that foremost statesman of our time, Governor Seward ; and we can now visit, explore and enjoy that wonderful country which, less than ten years ago, we deemed to be a *terra incognita*, and add to our wealth by engaging in its fisheries or the development of its mines.

We do not think we go beyond the limits of our position, when we inquire whether the few aged men, who have produced this result, are not worthy of some greater recognition than the persecution they seem to have been subjected to at the hands of the Executive and Legislative Departments of this Nation, ever since it became apparent that they would succeed in the full performance of their contract made with the United States, to connect by a railroad, the waters of the Missouri with those of the Pacific.

The road between Niles and Oakland, already spoken of, was consolidated with the Western Pacific. The Western Pacific and the Central Pacific were then consolidated into a new corporation, and with the new corporation there was consolidated the San Francisco, Oakland and Alameda Railroad Company, which had been formed by the amalgamation of the San Francisco and Oakland and the San Francisco and Alameda—and the San Joaquin Valley Railroad Company and the California and Oregon Railroad Company, under the name of The Central Pacific Railroad Company.

The stock of the original Central Pacific Railroad Company of California, of the Western Pacific, of the San Francisco Bay Railroad Company, of the San Francisco, Oakland and Alameda Railroad Company, of the San Joaquin Valley Railroad Company, and of the California and Oregon Railroad Company, were retired and exchanged for \$51,373,700 of the stock of the new Central Pacific Railroad Company :

For the stock of the Central Pacific of California, .	\$40,570,100
For the stock of the Western Pacific, . . . . .	7,900,000
For the stock of the California and Oregon, . . . . .	1,838,300
For the stock of the San Joaquin Valley, . . . . .	305,000
For the stock of the San Francisco, Oakland and Alameda, . . . . .	760,300

The entire capital stock of the last mentioned consolidated Company being the same as that of the Central Pacific Railroad Company of California, one hundred millions.

None of the roads consolidated with the Central Pacific of California have ever been a burden on the earnings of the main line; and the policy of consolidation, to put them all under one management, and run them all in one system, was certainly wise management in saving cost of superintendence, and, to some extent, of motive power and equipment.

If we may judge from the questions put by the Commissioners to witnesses that appeared before them, they were under the impression that these different lines were represented by too much of the capital stock. As we have heretofore said, that is a matter which concerned only the stockholders, and no bona fide stockholder has been heard to complain. All those who own stock at present, bought in view and with the full knowledge of what had been issued, and the purposes for which it had been issued. And certainly, from the position that the Government occupies in this matter, it has no cause of complaint.

The surplus earnings were divided among the stockholders, and whether those earnings were divided upon the basis of an issue of fifty millions instead of five millions, does not in any way interfere with the rights or the security of the Government.

After this consolidation various roads were built by the directors of the Central Pacific, through one or other of the Construction Companies. Many of them were leased to the Central Pacific, but as the result shows, as heretofore stated, at a net profit of something over ten millions. All such roads have been feeders to the main line or aided road. So that, in this respect, as in all the other acts of the Company, the position of the Government has not been damaged.

The only work undertaken by the directors of the Central Pacific which has in any way withdrawn any of the revenues

from the aided road has been the construction of the Southern Pacific, which they were forced to undertake in consequence of the legislation of Congress providing for such a road, and which, if they had not undertaken it, would have resulted much more disastrously to the revenues of the Central Pacific, as we state hereafter, and as the testimony before the Commission shows, that unless the directors of the Central Pacific Road had concluded to undertake its construction for the purpose of protecting the earnings of the Central, the Government would have guaranteed or endorsed eighty or one hundred million of the bonds of the corporation represented by the late Thomas A. Scott, to be used in such construction.

## XI.

### PURCHASE OF THE STOCK OF THE CALIFORNIA PACIFIC RAILROAD.

The California Pacific Railroad formed the shortest line from Sacramento to San Francisco. It was a distance of eighty-five miles, as compared with 137, the route of the Western Pacific *via* Oakland, and as against 177 miles on the Western Pacific, by way of San José, with the impediment on this line of a grade of ninety-two feet to the mile, a short distance south of San Francisco.

The testimony of Mr. Jackson, the former President of the California Pacific, shows that passengers coming from points east of Sacramento, ticketed to San Francisco by the Western Pacific, would abandon the coupons for transportation from Sacramento, and would buy tickets over the California Pacific, thereby saving about three hours time, and about fifty miles in distance.

The California Pacific, as Mr. Jackson also tells us, was engaged in the year 1871 in seeking aid of prominent capitalists in London and Frankfort, to incorporate a Company, and furnish means to build from Marysville, a point on its line, by way of the Beckwith Pass, to a connection with the Union Pacific. It was from these circumstances that the promoters and directors of the Central Pacific thought it to their interests, and to the interests of their creditors, and among them the Government of the United States, to secure the control of this line.

They did not use any money belonging to the Government for such purpose. They did not in any way impair the lien of the

Government upon the aided road. The public had already adopted that line as the most convenient and satisfactory mode of transit between the political and the financial capital of the State; and, apart from the danger to the financial success of the entire main line aided by the Government, it was the part of wisdom to control the shorter transit, to give those who came from points east of Sacramento the benefit of the shorter route to their destination, San Francisco.

At the time of this purchase, passengers over the California Pacific were taken by rail to Vallejo, and from there to San Francisco by steamer. The directors of the Central Pacific improved this route, by building a branch line to Benecia, using a ferry from that point to the shores of Contra Costa County, and by rail to Oakland, so as to make the transportation from Ogden to Oakland without change of cars, decreasing the time of travel over one hour.

These accommodations and the saving of time resulted, as do all such improvements of travel, in an increase of business, and in that way the aided lines were benefited. Certainly they did not sustain any damage.

This road was leased to the Central Pacific, certainly not to the disadvantage of the Government, if we are to give any credence to the wailings and lamentations of the owners of a minority of the stock. The lease was a financial benefit to the Central Pacific corporation, while it was just and fair to the lessors.

The advantages of this course will be further illustrated, if another trans-continental road should enter California to compete for through business to San Francisco. Even so far as the Atchison, Topeka and Santa Fe has penetrated into California, running cars as it does by arrangement with the Southern Pacific to Oakland, the advantages of controlling the California Pacific in the saving of time are already manifest. The Government, by its actions, has testified to the wisdom of this purchase, by its very properly directing that the mails for San Francisco be transported over the California Pacific, instead of by the longer route over the aided Western Pacific.

## XII.

### DIVERTING TRAFFIC FROM AIDED TO NON-AIDED LINES.

It is said that traffic has been diverted from the aided to the non-aided roads. That is true only in one case, and for that the Government, and not the directors, is responsible.

As to the roads built in California that are not included in the system of the Southern Pacific Railroad Company, all have tended to increase the earnings of the aided line; and this is also true of such business as the Southern Pacific gathers in California, and delivers to the Central Pacific at Goshen.

But, as we say, the diversion of the through business from the aided line to the Southern Pacific is not the fault of the Central Pacific. The Government forced this property on the promoters of the Central Pacific. It subsidized the line, provided it was built within a certain time, and it must have known that if two roads were to do the transportation business for the limited population upon the Pacific coast, the one would necessarily divert patronage from the other.

We say, that the Government forced this road upon the Central Pacific. When the Central Pacific was first completed from Sacramento to Ogden, it was in a crippled financial condition. It had, from the great difficulties of construction, and from the condition of the markets for labor and materials at the time at which it was constructed, and from the unparalleled haste of such construction, spent enough money in said construction to have paid for the building of two such roads.

The testimony of the contractors and employees who did the work of construction from Newcastle to Ogden is, that that road could have been constructed five years after its completion for about thirty per cent. of the money that it cost. Seventy cents out of every dollar expended was the cost of the great speed with which it was built, and of the war prices of material and the Government tax thereon.

The Central Pacific could not avail itself of the cheaper markets of the world. It could not buy its iron in Wales or Belgium. It could not ship its material to San Francisco under a foreign flag. It was forced to purchase American rails at an average of

over eighty dollars per ton, instead of English rails at an average, including duty, of fifty dollars a ton. It was forced to pay \$17.50 freight from New-York to San Francisco, when it could have shipped for less than \$10 from Cardiff to San Francisco. It was forced to pay a war insurance for goods shipped under the American flag as high as 17 per cent., when it could have obtained the same guarantee for goods shipped under the English flag for less than three per cent. It paid to the Government on many of the locomotives purchased, a war tax of \$960. It paid for two engines that it was forced to buy in an emergency, so that the work of construction might not be delayed, \$70,752. The first ten engines that it bought cost upward of \$191,000; the second ten upward of \$215,000.

The freight *via* Cape Horn on the first locomotive purchased by the Company was \$2,282.25. By reason of certain material being delayed in coming around Cape Horn it was compelled to ship some locomotives across the Isthmus of Panama. It paid freight on one locomotive \$8,100. On a shipment of eighteen locomotives by the same route it paid as transportation charges, \$84,886.80, being \$4,692 each.

Such examples might be continued indefinitely, but they are sufficient to show why the Central Pacific was, as I have stated, financially crippled when its last spike was driven.

If the California Pacific had proceeded unchecked with its scheme to connect with the Union Pacific by way of Beckwith Pass, it would have made such connection certainly for less than fifty cents on the dollar of the bonded and aided debt of the Central Pacific. And it was this knowledge, joined to the advantages the Central Pacific expected to derive in its local traffic from acquisition of a majority of the capital stock of that Company, that induced the promoters of the Central Pacific to acquire it.

And so with the Southern Pacific. With the easier grades upon that route, the aided roads were in no condition to stand the contest with the Southern Pacific Railroad in adverse possession, nor could they take the risk of allowing it to be built by Mr. Scott, or others in the interest of the Pennsylvania Railroad, with moneys furnished by the Government.

It was not a choice for the Central Pacific, whether it would construct this channel for the diversion of business from the

Central Pacific. Had it not done so, it would have been constructed by the Pennsylvania Road or its allies.

In evidence of our statement, that the Central Pacific was financially crippled, we refer to the debate that took place before the House Committee on Pacific Railroads, during the session of 1875. Thomas A. Scott, then President of the Pennsylvania Railroad Company, appeared before that Committee, seeking further aid for the Texas Pacific, so that it might build its road into California. Mr. Huntington, on behalf of the Central Pacific, opposed this project, and told the Committee that the Central Pacific was bound to build this road for its own protection. Mr. Scott retorted, that they could not build it, that their finances were in a desperate condition, that they were carrying a floating debt of fourteen millions.

Although Mr. Scott's statement was somewhat extravagant, it was so near the truth as to be far from pleasant to those who were representing the Central Pacific.

If the Southern Pacific had been operated as a rival road from the time of its completion, there would not have been any net earnings of the Central Pacific.

With such a competitor, it is more than doubtful whether the Central Pacific would pay operating expenses and fixed charges.

But by the course adopted, the Central Pacific has controlled this great element of danger, and has kept the aided roads in good condition, financially and physically, and they never were in better condition than they are to-day to perform the contract with the Government under which aid was obtained, keeping its road in a state of usefulness, at all times ready to yield all the service to the Government in the transportation of troops, munitions of war, public stores and the mails; whenever the Government felt that it could afford to pay for the services of a first-class road, instead of sending its business around Cape Horn or through a foreign territory.

The Commissioner of Railroads, in his report dated September 13th, 1887, says :

I inspected the road and its principal branches in June and July. This property, including track, road-bed, bridges, culverts, station buildings, workshops and tools, was in excellent condition. The ditches are ample, road-bed well raised, and ties and rails accurately and firmly laid. In the extensive and well equipped shops at Sacramento any work can be done that

a first class railroad can require, and those at Carlin and Wadsworth are placed and equipped to make repairs becoming necessary on the road. There is a good library at each station.

We leave this branch of the inquiry by saying, that in every act of the directors of the Central Pacific, whether in connection with the business of that Company directly, or whether as promoters or directors of local lines, they have not been the cause in any way of diverting business from the aided line, or in any way injuring the position of the Government.

And we say further, without fear of successful contradiction, that every invasion of the contract made between that Company and the Government, whether we review the contract by the terms of the Act of 1862, or the Amended Act of 1864, or by the spoliation of the Company under the Act of May 7th, 1878, known as the Thurman bill—every departure from the terms of that contract, whether implied or expressed, has been on the part of the Government of the United States.

It granted in aid of the construction of the road the land specified in the Act of 1864; but it has prevented the Company from enjoying the benefit of the grant, by refusing to issue patents for the land, and the Company is now claiming that it has been damaged by such refusal to the extent of at least \$500,000. It kept back a considerable amount of the aid-bonds after the road was being operated as a through line, on the ground that it was not completed according to the terms of the contract; but it forced the Company to pay it five per cent. on its net earnings, though by the terms of the Act of 1862 such per centage was not payable until after the road was completed. By retaining these bonds it forced the Company to borrow money to the amount that such bonds would have produced, and to pay for such loans interest ranging from twelve to fifteen per cent. per annum.

It has refused its transportation to the Company, and has actually paid more for the service than the amount at which it would have been performed by the Company. It has had its mails, troops, munitions of war and public stores transported over non-aided lines within the control of the Central Pacific Railroad Company, and has refused to pay for such service even after the Supreme Judicial Tribunal of the nation has pronounced that the Company<sup>2</sup> was entitled to such payment.

We do not know that the times are propitious to obtain a fair or equitable construction of this contract by any of the departments of the Government, other than the judicial. And it becomes every citizen of the United States to congratulate himself, that there is one department of his Government upon which he can rely; that there is one tribunal that is governed by certain fixed principles, and is not swayed by the political passions or interests of the hour; although it may require an amendment to the Constitution to force the other Departments of the Government to yield obedience to its mandates.

If the relations that exist between these railroad companies and the Government are to be used by the party in power to perpetuate itself, or by the party out of power to dispossess its opponent, then no decisive result will ever be obtained, no satisfactory solution will ever be arrived at in any discussion of the question between the Executive and Legislative Departments of the Government and its contractors, the Union and the Central Pacific Railroad Companies.

In all the testimony gathered by the various examining officers of the Government, derived either from the books and accounts of these railroad companies, or by oral examination of their friends or enemies, and in all that may be reported from the unauthorized and illegal inquiry under the auspices of the Commission appointed by the President, in pursuance of the Act of March 3d, 1887, not one tittle of evidence has been introduced, or will be found, to impeach the correctness of the conduct of either of these Companies in their relations toward the Government.

We go further, and say on behalf of the Central Pacific, that you cannot charge the managers of this road with any act that would not be sustained by the Courts, in the conduct of a guardian towards his ward.

The characters of the presiding officers of the Union and Central Pacific Railroad Companies are the equals of those of any citizen. There are no two men, in their public and private life, more actuated by honest and worthy motives, than Charles Francis Adams and Leland Stanford; and if ever their acts and intentions are weighed by any impartial tribunal, they will be found to be in accord with the high character they bear.

Mr. Stanford was the first Republican Governor of California. He was its "war" Governor. And he did more than any other man

within the State of California, by his firm, intelligent and wise action as Governor, in preventing strife and bloodshed during the early days of the rebellion, and keeping the State true to the Union. As was said by Mr. Campbell, of Pennsylvania: "*Thanks to the loyal people of California, Oregon and Washington, we have not been called upon to quell rebellion on the shores of the Pacific.*"

The opinion of the Legislature of California, as to the services and character of Mr. Stanford, was expressed after his term of office as Governor had expired, in the following resolution, adopted by both houses of the Legislature by unanimous concurrence:

"No. 3. Concurrent resolution, adopted December 15th, 1863: "*Resolved, By the Assembly, the Senate concurring, that the thanks of the people are merited and are hereby tendered to Leonard Stanford, for the able, upright and faithful manner in which he has discharged the duties of the office of Governor of the State of California for the past two years.*" (Statutes of California, 1863-64, p. 542.)

When the men who are controlling these two Companies come to Congress with the statement, that in a contract they have made with the Government they have been wronged, that there are equities in their favor which should be considered: when they say they entered into a contract with the Government, in which certain things were expressed, and that between the lines of that contract more was implied, and that effect should be given to the implied as well as the express terms of the contract, they are, at least, entitled to a respectful and impartial hearing by the representatives of the people. They should not have the doors of the inquiry chamber closed in their faces. They should not be made the victims of unreasonable or unconstitutional legislation.

The legislative department has not been ordained by our Constitution, or by any principle of natural right or justice, to construe a contract to which the Government is a party.

As was said by Mr. Hamilton in his celebrated communication to the Senate, under date of January 20th, 1795:

When the Government enters into a contract with an individual it deposes, as to the matter of the contract, its constitutional authority, and exchanges

the character of legislator for that of a moral agent, with the same rights and obligations as an individual.

Its promises may be justly considered as excepted out of its power to legislate, unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with a power to make a law which shall vary the effect of it. (3d Hamilton's Works, pages 518, 519.)

Our fathers, and they were wise men in their generation, left the contests between the governing power and the governed to the calm, placid and mediating equity of the courts provided by the Constitution.

The constructors of the Central Pacific say: We entered into a contract to assist in the performance of a national undertaking, which was supposed and declared at the time to be an impossibility; we risked the results of our labors for two score or more of years in aiding the Government to reclaim the territory between the Missouri and the Sacramento and to more effectually guard its Pacific possessions; we put into it our worldly substance and risked our lives by exposure to the elements amidst the rigorous winters of the Sierra Nevadas, to carry out in good faith the contract we had made, and to do it in half the time allotted. We come now and say to you that in making that contract we relied on your statement, that you would give to these two roads the patronage of the Government, which had averaged for many years not less than \$7,300,000, and which you expected would largely increase in the future; and that the revenue from this source we expected, and as you expected, and as was so announced in the debates in Congress, would cover the credit which you advanced to us, and the interest that you were to pay for our use of such credit; and we say that you have so far fallen short in your contract with us as to render to us your business amounting to but one-tenth part of the promised compensation, and although you agreed to pay us for doing all your business reasonable and fair compensation, and the same rates paid to us by our other patrons, yet that you have so far disregarded your obligations in the premises as to keep from us all the transportation you controlled which you could ship by any other line, not even giving to us the preference at the same prices; and we show you that by our efforts and the use of our capital you have already saved by the performance of our contract, and retained in your Treasury over \$139,000,000; and in the language of the General com-

manding your armies, the Indian as a problem has been obliterated from army tactics, by reason of opening the vast territory between the Missouri and the Sacramento to settlement and civilization; all of which has been accomplished by the due fulfillment of our part of the contract entered into with you.

When we come to you, as the governing power of the nation, to represent these facts, and the advantages which you enjoy, and will continue to enjoy, we say they are matters which should engage your earnest attention, and we ought not to be met with vituperation or invective.

### XIII.

#### INFLUENCING LEGISLATION.

The Commission appointed under the Act of Congress of March 3d, 1887, were charged to inquire—

What amount of money or other valuable consideration, such as stock, bonds, passes, &c., have been expended or paid out by said Companies, whether for lawful or unlawful purposes, but for which sufficient and detailed vouchers have not been given or filed with the records of said Company?

This branch of the inquiry forms question No. 20, which the Commissioners printed and sent to the officers of Companies which had received aid from the United States.

Mr. Stanford, President of the Central Pacific, made answer in writing, as follows:

In answer to interrogatory No. 20, I have to say, that the Company, in its settlement with the Government, proposes to claim nothing as expenses in determining the net earnings in which the Government has an interest, for which the Company does not furnish full and satisfactory vouchers. It is entirely immaterial to the Government, and the Government can have no interest in knowing what amount of money has been expended for which the vouchers on file are not sufficient in detail or otherwise. I would, however, remark, that all items of expenditure, for which detailed vouchers are not on file, have from time to time been approved by the directors and stockholders of the Company.

Question 21 of the printed questions reads:

Further to inquire and report whether said Companies, or either of them, or

their officers or agents, have paid any money or other valuable consideration, or done any other act or thing for the purpose of influencing legislation.

Mr. Stanford answered the question as follows :

In answer to interrogatory No. 21, I have to say, in behalf of the Central Pacific Railroad Company, that no deduction will be made from that portion of the net earnings belonging to the United States, on account of any expenditure for which detailed and satisfactory vouchers are not furnished. We will account to the Government as if no such expenditures had been made.

On the oral examination of Mr. Stanford by the Commission, vouchers for money paid to him by the Company were shown to him, and he was asked by the Chairman of the Commission to explain.

The examination took the following form :

“ Q. Mr. Stanford, will you please look at the voucher, and explain to the Commission, in detail, the character of the expenditure covered by the amount named in the bill ?”

this voucher was February 7th, 1876, and it was for general expenses to December 31st, 1875.]

Mr. Stanford examined the voucher for some time, and was asked by his counsel :

Q. Have you any recollection of the contents of that voucher ?

A. No, sir; I don't remember. I presume it is made up of a great many items, but I have no recollection of this particular voucher.

*The Chairman.*—Q. How did you make up that sum ?

A. Well, except they have my voucher, I could not tell, because I don't remember. But I used to pay out money for the Company, one way and the other, and after a time I would pass in my accounts, or rather, my vouchers, and it would be made up by somebody connected with the office, presented and allowed to me ; and I presume this is one of that kind.

Q. Have you any accounts, showing any detailed statement, from which you took that sum of money, in order to give a voucher to the Company ?

A. None at all.

Q. For what purpose would you make expenditures ?

A. Well, I can tell you generally. Our accounting offices for a long time were at Sacramento, and I used to be in San Francisco doing business for the Company, a great deal of the time. In those days I borrowed money, paid out interest, renewed notes, and sometimes paid commissions for large amounts. Everything I paid out for the interest of the Company would be made up and presented, and I would be credited for the aggregate.

Q. Did you make any explanation to the Company, at the time that you presented the voucher?

A. I have no doubt that I did.

Q. What explanation did you give to the Company?

A. Well, as I don't remember the items of the voucher, I cannot remember, of course, the explanation I may have given to the Company. I don't think I went into details. I think I said I found it necessary to expend, in the general interest of the Company, so much, and I do not think that they ever questioned me particularly as to the wisdom of the expenditures.

Q. Was any part of the \$171,000, the sum named in this bill that I have handed to you, and which you have paid, expended for the purpose of influencing legislation?

Mr. Cohen, of counsel for the Central Pacific, said: "We object to the question, for the reason that the witness says he does not remember what constituted the items composing this voucher. For that reason, we advise him to decline answering further questions with respect to this voucher. Our advice is also founded upon the fact, that the Company is willing to account to the Government for its proportion of any voucher that is produced, or any entry upon the books that is unexplained, and, therefore, we cannot see that it will make any difference what the Company did with the money, whether it threw it into the sea, or wasted it in any manner or form; and speaking for myself, as counsel, and believing that I express the views of my clients, I say that I regard these questions as simply seeking to pander to a public scandal, and that they cannot have any bearing upon the purposes or objects entrusted to this Commission."

*By the Chairman:*

Q. I repeat my question: Was any part of the sum named in the voucher submitted to you paid to any agent or individual for the purpose of influencing legislation?

Before the witness made answer, the Chairman said:

"If you don't know it you can answer the question."

A. I told you, I don't know anything about this; but then I shall act upon the advice of my counsel. I do not suppose it can make any possible difference so long as we account for the money. The Government cannot have any more than the money, and the Company is willing to account for that, if you are not satisfied with the vouchers.

Q. Do you decline to answer my question?

A. Under the advice of counsel, I do, any further than I have answered it.

The witness further said:

"I state that I never corrupted or sought to corrupt any mem-

ber of any Legislature, or any member of Congress, or any public official, nor have I ever authorized or allowed any agent of mine so to do."

It is in evidence before the Commission, that all the expenditures made by Mr. Stanford, for which there are no detailed vouchers, have been approved by the Board of Directors and ratified by the stockholders.

Now it will be seen, that the witness, being examined twelve years after the money had been expended, having no recollection of the purpose of the expenditure, was, by the action of this Board, pretending to exercise judicial functions, forced into the position of being compelled, under the advice of his counsel, to decline further reply.

It may be said, that it appeared when the matter was submitted to the Circuit Court of the United States, upon the application of the Commission to compel the witness to answer, that this particular voucher had already been scrutinized by the Government Auditor of Railroad Accounts; that he had refused to allow it as a proper deduction from the gross earnings of the Company, and that in settling with the Government, the amount of this voucher was treated as money on hand, and the United States received its proportion, which was covered into the Federal Treasury in the manner provided by law.

The questions put by the Commission were calculated to put this witness in a false position. He had sworn he could not recollect the purposes for which the sum of money, or any part of it, represented by this voucher, had been expended, and when, disregarding the truthfulness of his reply, he was asked whether any portion of it had been spent for the purpose of influencing legislation, the counsel representing him would have been untrue to their duty if they had not assumed the responsibility and advised him to decline to answer further.

But an answer to the question which the counsel advised this witness not to make was really contained in his first reply, that he did not remember the purposes for which this money had been expended.

"Influencing legislation" has a wide and diverse meaning.

Every American, who cares for his birthright, and who under-

takes to perform the duties of citizenship, influences legislation when he declares his preference for one candidate for a legislative office above another. His neighbor, who goes forth to represent him in the local Legislature or in Congress, to whom he has stated his views on the current questions of the day, which will form the subject of enactment, is influenced in his course by such expression, and in this way, every voter for a successful candidate may be said to influence legislation.

It is the right and the duty of every citizen to influence legislation; and the more interested he is in the subject matter, the higher becomes the duty to use his influence to obtain such laws as his necessities justly demand. The duty of determining upon the propriety of a proposed statute, is with the legislative body.

As the necessities arise for interfering in legislative acts, the purpose of which is not announced before a Legislature meets, and as the persons interested in such subject may be distant from the State House, or from the National Capital, it is proper to employ agents, who reside at the Capital of the State or of the Nation, to represent those who may be interested in the enactments proposed.

The payment of money to influence legislation may be made with the most perfect propriety. Effective service by intelligent agents, cannot be procured gratuitously before a legislative department more than before the judicial department.

In England the business of parliamentary agents is recognized and respected. Those having business with the Legislature of Great Britain are represented by agents, just as suitors in Court are represented by counsel; and although the business of agents of this character in this country is not as highly esteemed as in England, it would be better for the community if it were so.

There is no more valid reason why one should not properly employ an agent to promote the passage or defeat of a pending measure than that he should be debarred from the employment of counsel to prosecute or defend in a Court of justice.

It is said that the Central Pacific has disbursed a large sum for such service.

It was proved before the Commission that the parliamentary cost of explaining to Committees and obtaining the necessary legislation for the Brighton Railway averaged over . . . £4,800 per mile.  
Of the Manchester and Birmingham, . . . 5,000 " "

Of the Blackwall Railway, . . . . £14,400 per mile.  
 That the solicitors' bills for the Southeastern  
 Railway was a total of . . . . £240,000

The expenditures of the Central Pacific are insignificant, as compared with the cost of the same services required for obtaining the necessary legislation from the English Parliament. But whatever amount has been spent by the Central Pacific for the purpose of influencing legislation, the Government is the responsible cause for the largest portion of such expenditure. Long before the last rail was laid, and continuously since, this Company has been subjected to the most nagging and ceaseless persecution at the hands of the officers of the various Departments and of Congress. And it has been to ward off the hostile effects of such adverse action that this Company has been compelled to employ agents and attorneys to explain their true position to officers of the Departments and to members of Congress, and the necessity for such expenditure has recurred with every change in the incumbents of the different Departments and their subordinates, and with the election of each Congress.

Take the case in hand. The witness, Mr. Stanford, is President of a railroad system extending from Portland, Oregon, to the Salt Lake Valley, and from the City of San Francisco to the City of New-Orleans, covering a distance of nearly five thousand miles.

The interests of the corporations he represents are liable to be the subject of legislative enactments in the States of Oregon, California and Nevada, and in the Territories of Utah, Arizona and New-Mexico, and the States of Texas and Louisiana; and the net earnings of the whole system are liable to be controlled by the by-laws, resolutions and ordinances passed in every county and every municipality in each one of those States and Territories through which any portion of this railroad system may penetrate, and the interests of all such corporations, and especially of the Central Pacific, are liable to be seriously affected by the legislation in Congress and by the rules adopted for the government of the different executive Departments with which these Railroad Companies have business.

It therefore becomes the duty of the President or managers of such Companies to watch and to influence the legislation of all

these tribunals, that the corporate interests may not be adversely affected.

It is just as much the duty of the managers or directors of a corporation to do this, as it is to defend any action that may be brought against it, and for such purpose to employ and pay for the services of intelligent agents, to protect it against hostile legislation, as it would be to employ and pay for the services of counsel, learned in the law, to protect it against an unjust judgment.

To defeat proposed unjust and hostile legislation, a resort must be had to the services of those who are not known to be in the employment of the corporation whose interests they guard.

The plans and purposes of the authors of drastic measures would not become known to the directors of the corporation, if their agents heralded their employment.

Corporations, like governments, must work with secret agents, and when the business of such an agent becomes public, his usefulness is at an end.

To have informed the Commission of all the agents employed by the corporation under the management of this witness, would have put in peril the further prosecution of its business, both physical and financial.

Some portions of the road, operated by the Central and Southern Companies, are run through districts where the safe passage of a train is subject to the same risk of interference as a stage used to be on our frontier lines. There are men banded together in the territories to rob the mails and treasure in transit. We could not, with any safety, name the men employed in the prevention or detection of these acts.

We have agents also to guarantee to us the faithfulness and to warn us of the unfaithfulness of various classes of employees. Their discharge from our service must necessarily follow the rendering of their names. The most important information that all corporations of this character receive must of necessity come through secret agents. The names of the attorneys who appear before Committees or Courts are well known, but it is not with that class that the Commission were concerned.

To accomplish these results there must be in the employ of the corporation well trained special agents, and money must

be disbursed for their remuneration. In the conduct of public affairs a fund for this purpose is usually provided by the Legislative Department to be used by the Executive.

Such a fund has been entrusted to the Chief Magistrate of the Nation, and to the Governor of every State since the formation of our Government; and the man who controls the operation of the millions of capital represented by four or five thousand miles of railroad and the financial interests of its owners must have a like fund. It is in the interest not only of the stockholders of such corporations, but of the public, to confide it to him.

It is not out of place to say that the man whose honor was sought to be impugned possesses without regard to political parties the confidence of the people of the State of California, of which he has been Governor, and which he is now representing as a Senator in Congress.

We have heretofore shown in the course of this argument that the people of his State and of the Nation trusted him in perilous times, and that he performed his high and arduous duties so as to meet the approbation of the people and receive the thanks of the Legislature. It is not claiming too much that every presumption goes with him in the supposition that he expended any fund entrusted to him without violating any law of the State of which he had been Chief Executive, or any Federal law which, as Senator as well as citizen, it is his duty to uphold and protect.

In the history of our country quite unseemly exhibitions have been witnessed before. The President of Congress was challenged to declare how much of the secret service fund had been expended in enabling Mr. Franklin to make a loan from the French Government for the use of the United States.

In England a faction of the House of Commons, following the lead of an opposition paper, brought disgrace upon themselves by challenging the Government to say how much of the secret service fund had been used to aid Mr. Canning in his mission on behalf of the Government to Portugal.

It will not do to assume, when a witness (of such a character as this worthy Governor has shown himself to be) refuses to answer a question, that such refusal is made to conceal improper or unworthy motives or actions.

When Sir John Campbell, afterwards Chief Justice of England, and then Lord Chancellor, was defending Lord Melbourne, the

Prime Minister, from the charge of maintaining improper relations with Mrs. Norton, he said, it would be unfortunate if the public mind became so debased as to imagine that when a man and a woman came together, with the opportunity for misbehavior, they had availed themselves of the occasion. And so it may be said, that it is to be hoped that the public intelligence of this country will not be so low as to believe that when the managers of an immense corporation are forced to employ agents, or expend money to prevent hostile legislation, they have made such expenditure in an unlawful or corrupt manner.

There is not a leading corporation in the country that has not been forced to so protect itself.

There is not an intelligent person of mature age in this country who does not know that leading corporations, not only railroads, but banks and insurers, would be severely mulcted by adverse and ill-considered legislation, promoted by the worst class in the community, who hang about legislative halls, unless effective measures were taken to prevent such results.

And, therefore, it is necessary to explain to members of Legislatures, the merits or demerits of any proposed bill before them, seeking their sanction. Notwithstanding the vituperation, the abuse, that it is the custom to heap upon our legislative representatives with but few exceptions, they will be found disposed to act in accordance with right and justice. Often because the measures before them are not sufficiently explained, they are liable to come to an erroneous conclusion.

The representatives of the people are a true reflex of those who elect them, and being informed of the merits of the case on which their action is invited, may be trusted to reach as nearly a right and intelligent solution as is possible for men called from the various walks of life in dealing with subjects on which they have had little or no experience.

It is a gross scandal on the American people, to assert that money used to influence legislation finds its way into the pockets of the men representing them in their Legislatures.

The present Executive of this nation, who performs his duties so much to the satisfaction of the people of the country, but a few months ago declined to inform the Senate of his reasons for removing certain citizens from office. It would have been as much out of character to have suspected him of unworthy motives,

in making such removal, as it is to ascribe them to this witness, whose services to the public in the official positions he has held have been as truly and faithfully performed.

#### XIV.

##### DISASTROUS EFFECTS OF THE "THURMAN BILL" ON THE INDEBTEDNESS OF THE CENTRAL PACIFIC TO THE GOVERNMENT.

By Sections 5 and 6 of the Act of July 1, 1862, Congress provided for the payment to the Government of the indebtedness of the Central and Western Pacific Railroad Companies.

Section 5 reads:

To secure the repayment to the United States, as *hereinafter provided*, of the amount of said bonds, so issued and delivered to said Company, together with all interest thereon which shall be paid by the United States, the issue of said bonds, and delivery to the Company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued.

Section 6 provides that:

The grants aforesaid are made upon condition that said Company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, munitions of war, supplies and public stores upon said railroad for the Government whenever required to do so by any Department thereof; and that the Government shall, at all times, have the preference of the use of the same for the purposes aforesaid, at fair and reasonable rates of compensation, not to exceed the amount paid by private parties for the same kind of service; and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest, until the whole amount is fully paid, \* \* \* \* \* and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

This reservation of payment was changed by the Act of July 2, 1864, which provided:

That only one-half of the compensation for the services rendered to the Government by said Companies shall be required to be applied to the payment of bonds issued by the Government in aid of the construction of said road.

Prior to the passage of the Act of May 7, 1878, known as the "Thurman Bill," it was contended by counsel for the Central Pacific that the mortgage reserved by the Government under the provisions of Section 5 of the Act of 1862, secured to it the building and completion of the road, it being kept in constant repair for efficient service, and the rendering of its use to the Government whenever required for the transportation of its mails, troops, munitions of war and public stores, and for the payment of the indebtedness of the Company: *first*, under the terms of the Act of 1862, by the amount of all the compensation for services performed for the Government; and, *second*, in the manner provided by the change in the law of 1864, by the payment of one-half of the amount of compensation earned by such service; and, in both cases, by the payment of five per cent. of the net earnings of the Company.

After the construction of the Union and Central Pacific roads, it was seen that both Congress and the Companies had been mistaken in their calculation of the amount that the transportation done by the Companies for the Government would produce. Instead of, as was contended by the Senators and Representatives in the debates that preceded the passage of the Act of 1862, and its amendment in 1864, such transportation producing an amount that would not only satisfy the interest to be paid, but would leave a considerable sum in each year to constitute a sinking fund for the redemption of the principal, it was found, that whilst the business increased in volume, yet the rate of compensation being so greatly reduced from the prices the Government had to pay before the construction of the roads, that the Companies could not and did not in any one year perform sufficient service to meet the annual payment for interest.

As we have heretofore shown, the Government was, of course, a large gainer by this mistake of the parties in their anticipation of the results of the construction of these roads. The Government had all the service that it required, performed at about one-tenth of the charges they had paid before the road was built. Instead of paying to the Companies such rates of compensation as they had anticipated, they covered the difference into the Treasury, and the Companies became its debtors for the difference between the rates of transportation allowed and the amounts paid for interest on the bonds.

An attempt was then made to force the Companies to repay to the United States the interest on the bonds as the same was paid by the Government, but the Supreme Court decided that the Companies were under no obligation to refund to the United States the interest paid before the maturity of the principal of the bonds.

The point does not seem to have been made or suggested, that the payment by the Companies of the interest or the principal of these bonds in money was an afterthought, and that by the terms of the contract, contained either in the Act of 1862 or the amendment of 1864, they were obligated to pay only in services, and without regard to time.

It became evident, from the transportation accounts between the Companies and the Government, that the latter was paying in ten years only about the amount they had anticipated paying in one, and that such sums, joined to the five per cent. of the net earnings, would never suffice to discharge the interest or principal of said bonds, and that the total amount of such interest and principal at the time the bonds matured would be far beyond the ability of the Companies to pay.

It will not be forgotten, that during all the time, the only sufferers were the Companies; the Government was losing nothing; it was annually saving an amount sufficient to cover all the interest it was paying, and enough more to cancel a portion of the bonds. In other words, it was keeping to itself the money which, when it made its contract with the Companies, it designed to pay them. The Companies were keeping their contract with the Government in good faith, with the result of being year by year brought more deeply in its debt.

But Congress saw only the increase of this debt. It did not regard the fact that the Companies were doing all and more than they had agreed; that the United States were reaping the entire benefit of the contract, as designed by the representatives of the people when it was made—shut its eyes to the fact that nine-tenths of the compensation which it had impliedly agreed to pay to the Companies was being retained by the Treasury, and saw only the science of its accounting officers in chalking up this tremendous score against the other party to the contract. And so it resolved, in defiance of law, contrary to the principles of equity and fair dealing, ignoring the commonest rules of right and justice

that it would construe a right reserved to it in the contract, to alter or amend it, to compel the Railroad Companies to pay the principal and interest of these bonds in money instead of services, and that they should commence doing this years before the debt matured, and so that act of spoliation, known as the "Thurman Bill," was added to the statute book on May 7, 1878.

That Act provides :

That the net earnings mentioned in the Act of 1862 shall be ascertained by deducting from the gross amount of earnings the necessary expenses actually paid within the year in operating the same, and keeping the same in a state of repair, and also the sum paid within the year in the discharge of interest on first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said Companies respectively for interest upon any other portion of the said indebtedness ; that there shall be established in the Treasury of the United States a sinking fund, which shall be invested in bonds of the United States, and the semi-annual interest thereof shall be in like manner, from time to time, invested, and the same shall accumulate and be disposed of as hereinafter mentioned.

It further provides that :

There shall be carried to the credit of said fund, on the first day of February in each year, the one-half of the compensation for services rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest ; and in addition thereto, said Company shall on said day in each year pay into the Treasury, to the credit of said sinking fund, the sum of twelve hundred thousand dollars, or so much thereof as may be necessary to make the five per cent. of the net earnings of its road, payable to the United States under said Act of 1862, and the whole sum earned by it as compensation for services rendered the United States, together with the sum by this section required to be paid, amounting in the aggregate to twenty-five per cent. of the whole net earnings of said railroad, ascertained and defined as hereinafter provided, for the year ending on the 31st day of December next preceding ; that the said sinking fund so established and accumulated shall, at the maturity of such bonds, so respectively issued by the United States, be applied to the payment and satisfaction thereof, \* \* \* \* \* and of all interest paid by the United States thereon, and not re-imbursed, subject to the provisions of the next section.

The next section being—

That said sinking fund, so established and accumulated, shall \* \* \* be held for the protection, security and benefit of the lawful and just holders of the mortgage lien debts of said Companies lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund,

according to their respective lawful priorities, as well for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this Act provided, of any mortgage lien or other creditor of any of said Companies respectively, nor to excuse any of said Companies respectively from the duty of discharging out of their funds its debts to any creditor except the United States.

It would seem that the construction to be given to the last section of the Act of May 7, 1878, is, that the Government has changed the contract for the payment of the principal and interest of the bonds, by providing a fund from which they shall be paid; and that, on compliance with the terms of this Act, the Company is not required to furnish any other mode of payment, nor, without any change in the law, can the Government demand it.

The Companies did not assent to this change in the contract, and resisted its validity; but the Supreme Court of the United States, speaking through the Chief Justice, held, that

*This Act establishes a sinking fund for the payment of the debts when they mature, but does not pay the debts. The original contracts of loan are not changed. All that has been done is, to make it the duty of the Company to lay up a portion of its current net income to meet the debts when they do fall due. That it is a matter of no consequence that the Secretary of the Treasury is made a sinking fund agent, and the Treasury of the United States the depository, or that the investment is to be made in the public funds of the United States. This does not make the deposit a payment of the debt due the United States. \* \* \* \* \* It takes nothing from the corporation or the stockholders which actually belongs to them. It oppresses no one, and inflicts no wrong.*

Mr. Justice Strong, dissenting, said:

In my opinion, the Act of Congress of May 7, 1878, is plainly transgressive of legislative power. \* \* \* It is as much beyond the power of a Legislature, under any pretence, to alter a contract into which the Government has entered with a private individual as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contracts, the Government, in all its departments, has laid aside its sovereignty, and it stands on the same footing with private contractors.

Speaking of the contracts made by the Acts of 1862 and 1864, Mr. Justice Strong says:

It is manifest that by this contract the Government acquired a vested right to payment at the time and in the mode specified, and the Company acquired

a vested right to retain the consideration given for its assumption, that is, a vested right to withhold payment until, by the terms of the Act, it became due. The contract implied an agreement not to call for payment, or additional security, before that time. There is no technicality about vested rights. Most of them grow out of contracts, and no matter how they arise, they are all equally sacred, equally beyond the reach of legislative interference. \* \* \* \* \* There are other provisions of this Act intended to enforce compliance with these newly added obligations imposed upon the debtor. No one can deny that they materially change the contract of loan and borrowing previously existing between the Government and the Railroad Companies, and change it at the will of the creditor alone.

Mr. Justice Bradley, also dissenting, said :

I think that Congress had no power to pass the Act of May 7th, 1878. The power of Congress, even over those subjects upon which it has the right to legislate, is not despotic, but is subject to certain Constitutional limitations. One of these is, that no person shall be deprived of life, liberty or property, without due process of law; another is, that private property shall not be taken for public use without just compensation; and a third is, that the judicial power of the United States is vested in the Supreme and inferior Courts and not in Congress. It seems to me that the law in question is violative of all these restrictions.

The contract between the Union and Central Pacific Railroad Companies and the Government was an executed contract and a definite one. It was, in effect, this : that the Government should loan the Companies certain moneys, and that the Companies should have a certain period of time to repay the amount, the loan resting on the security of the Companies' works. Congress, by the law in question, without any change of circumstances, and against the protest of the Companies, declares that the money shall be paid at an earlier day, and that the contract shall be changed *pro tanto*. This is the substance and effect of the law. Calling the money paid a sinking fund makes no substantial difference. Congress takes up the question *ex parte*, discusses and decides it, passes judgment, and proposes to issue execution, and to subject the Companies to heavy penalties if they do not comply. That is the plain English of the law. In view of the limitations referred to, has Congress the power to do this? In my judgment, it has not.

It will not do to say that the violation of the contract by the law in question is not a taking of property. In the first place, it is literally a taking of property. It compels the Companies to pay over to the Government, or its agents, money to which the Government is not entitled. That it will be entitled by the contract to a like amount at some future time does not matter. *Time is a part of the contract.* It is needless to refer to the importance to the Companies of the time which the contract gives. If it be alleged that the security of the Government requires this to be done in consequence of waste or dissipation by the Companies of the mortgage security, that is a question to be settled by judicial investigation, with opportunity of defence. A prejudgment of the question by the legislative department is a usurpation of the

judicial power. \* \* \* \* The power reserved to alter, amend and repeal the charter is not sufficient to authorize the passage of the law in question.

I will only add further, that the initiation of this species of legislation by Congress is well calculated to excite alarm. *It has the effect of announcing to the world, and giving it to be understood, that this Government does not consider itself bound by its engagements. It sets the example of repudiation of Government obligations. It strikes a blow at the public credit. It asserts the principle that might makes right. It saps the foundations of public morality.* Perhaps, however, these are considerations more properly to be addressed to the legislative discretion. But when forced upon the attention by what, in my judgment, is an unconstitutional exercise of legislative power, they have a more than ordinary weight and significance.

Mr. Justice Field said :

The decision will, in my opinion, create insecurity in the title to corporate property in the country. It, in effect, determines that the General Government, in its dealings with the Pacific Railroads, is under no obligation to fulfill its contracts, and that whether it shall do so is a question of policy and not of duty. The relation of the General Government to the Pacific Companies is twofold : that of sovereign in its own territory, and that of contractor. As sovereign, its power extends to the enforcement of such acts and regulations by the Companies as will insure, in the management of their roads and conduct of their officers in its territory, the safety, convenience and comfort of the public. As a contractor it is bound by its engagements equally with a private individual ; it cannot be relieved from them by any assertion of its sovereign authority. \* \* \* \* \* The proposition of the Government the Central Pacific accepted, and filed its acceptance as required, and thereupon the provisions of the Act became a contract between it and the United States, as complete and perfect as it could be made by the most formal instrument.

By the Act of 1878, additional security is required for the ultimate payment of its own bonds, and the subsidy bonds of the United States, by the creation of what is termed a sinking fund, that is, by compelling the Company to deposit \$1,200,000 a year in the Treasury of the United States. It is not material, in the view that I take of the subject, whether the deposit of this large sum in the Treasury of the creditor be termed a payment, or something else. It is the exaction from the Company of money for which the original contract did not stipulate, which constitutes the objectionable feature of the Act of 1878.

I cannot assent to a doctrine which would ascribe to the Federal Government a sovereign right to treat as it may choose corporations with which it deals, and would exempt it from that great law of morality which should bind all Governments as it binds all individuals, to do justice and keep faith.

In the case at bar the contract with the Central Pacific is changed in essential particulars. The Company is compelled to accept it in its changed form, and by legislative decree, without the intervention of the Courts. \* \*

\*        \*        If the Government will not keep its faith, little better can be expected from the citizen. If contracts are not observed, no property will in the end be respected ; and all history shows that rights of person are unsafe where property is insecure. Protection to one goes with protection to the other ; and there can be neither prosperity nor progress where this foundation of all just government is unsettled.

The moment, said the elder Adams, the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.

Under this law, which received such scathing denunciations from three of the venerable and learned Judges of the Supreme Court of the United States, the Central Pacific has paid into the United States Treasury, up to December 31st, 1886, for the sinking fund account, \$3,168,650.50.

A portion of this sum has been invested by the Treasury, against the earnest protest of the Central Pacific, in the purchase of bonds issued in aid of the construction of the roads, known as "Currency Sixes," at a premium of  $34\frac{21}{100}$  per cent.; in other words, the bonds which the Central Pacific sold at a discount of about 30 per cent., to obtain money for the construction of its road, the Government has purchased at a premium of nearly 35 per cent.; that is, for each bond for which the Central Pacific received \$744.40, the Government, against its protest, has purchased for its account, paying therefor \$1,342.10.

The total loss to the Central Pacific, from this mode of handling the sinking fund, up to this time, may be stated as follows:

Amount paid into the sinking fund, . . . . .	\$3,168,650 50
Premium paid on bonds, . . . . .	\$947,222 40
Premium received on bonds, \$54,752 50	
Interest received, . . . . .	320,006 72    374,759 22    572,463 18

Balance in fund, bonds and cash, . . . . .	\$2,596,187 32
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Interest that would have been earned by the Company's investments to June 1st, 1887, . . .	\$1,040,503 54
Balance of deficit to date by Government invest- ment, . . . . .	572,463 18

Loss to Central Pacific by United States sinking fund investment, . . . . .	\$1,612,966 72
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If the money paid into the sinking fund had been left with the Central Pacific and allowed to earn, and it had been earning six per cent. per annum, there would to-day be in the sinking fund \$1,612,966.72 more than there is.

There are no present obligations imposed on these Companies by any law which are not now fulfilled.

But the Government does not appear to be at all uneasy about the unfortunate position in which the finances of these roads have been placed under the requirements of the Thurman Bill.

In the report of the Secretary of the Interior for the year 1880, which has annexed the report of the Auditor of Railroad Accounts, dated November 1, 1880, the Auditor, at page 17, after showing that the payments rendered by the Central Pacific to the sinking fund, from July 1, 1878, to June 30, 1879, had amounted to a grand total of \$798,454.31, and that \$512,200 of that sum had been invested in bonds, of which \$119,000 were the bonds formerly issued to aid in building the road, and that upon said \$119,000 the Treasury had paid and charged to the Central Pacific a premium of \$57,285.73, says :

The amount of premium paid is so large that the Companies have protested against the investment at such heavy cost. \* \* \* The Honorable the Secretary of the Treasury, in 1879, and again in June, 1880, informed Congress of the difficulties which lay in the way of making a just and profitable investment of these moneys.

In the report of the Commissioner of Railroads for 1881, he says, at page 10 :

The cash payments which have been required from the Central Pacific, in addition to the detention of the entire compensation for services, is \$1,203,113.53, which amount it has deposited in the Treasury.

And he says, that

Up to the date of that report November 1, 1881, the Treasury had paid out as premium on bonds purchased for the Central Pacific sinking fund, \$168,727.73.

He further says :

No investment has been made since April 6, 1881.

The Companies have repeatedly protested against the heavy cost of these investments.

As high as 135 has been paid, as, for instance, \$198,000 was invested by the Treasurer in April 6, 1881, in currency sixes at a premium of 35.

He quotes from his last year's report, of the action taken by the Secretary of the Treasury, in informing Congress of the difficulties which lay in the way of a just and profitable investment, and says :

I renew this recommendation of my predecessor, and agree with him that it is due to the Companies affected by the Act of May 7, 1878, that the Secretary of the Treasury be given authority to credit the amounts covered into the sinking fund, with interest at five or six per cent. per annum, payable semi-annually, or, I will add, to invest the sinking fund in either the Companies' first mortgage bonds or such bonds as have been issued to the Companies by the United States.

The attention of Congress was likewise invited to this subject by the Hon. Hugh McCulloch, Secretary of the Treasury, in his annual report submitted in December, 1884, in which he concurs in the views expressed by Secretary Sherman in December, 1879, and in June, 1880.

In his report for 1882, the Commissioner of Railroads, after stating the total cash payment from the Central Pacific to December 31, 1881, was \$1,282,264.44, which that Company had deposited in the Treasury, says, (page 11 :)

The Central Pacific has to its credit in the sinking fund \$1,534,614.26.

And again repeats :

The last investment was made April 6, 1881, at which time a premium of thirty-five per cent. was paid, but repeated protests have been made by the Companies against the heavy cost of these investments.

On June 30, 1882, the amount remaining in the Treasury uninvested was as follows :

Credit	Central Pacific,.....	\$527,886 53
"	Union Pacific,.....	407,441 99
		<hr/>
		\$935,328 52

On which the above Companies are receiving no interest whatever.

And he adds :

Which amount has since been largely increased.

*The fund has evidently not accomplished the result anticipated,* and since April, 1881, may be regarded as having practically failed for want of suitable investments.

In his report for 1883, page 12, the Commissioner says:

On June 30, 1883, the Central Pacific had to its credit in the sinking fund, \$2,404,115.86, and the Union Pacific, \$1,632,697.59, and on the same day there was uninvested to the credit of the Central Pacific, \$844,652.13.

The Commissioner again says:

That the sinking fund has not accomplished the result anticipated is quite evident, and may be regarded as practically a failure for want of suitable investments. \* \* \* This is a manifest hardship to the Companies, as the amount should be drawing a fair rate of interest, and correspondingly diminishes the available funds in the hands of the Government.

I therefore renew the recommendation, that if the sinking fund is to be continued, the discretion of the Secretary should be enlarged as to the investment of the fund.

In the report for 1884, page 17, it was shown that on June 30, 1884, there was to the credit of the Central Pacific sinking fund, uninvested, \$1,089,159.75.

The Commissioner says, page 18:

I again invite attention to the inadequacy of the present sinking fund method of securing payment from the bonded railroads of the large and rapidly increasing indebtedness. Experience has fully demonstrated that the Act of May 7, 1878, for reasons which could not be anticipated when it was passed, has failed to realize the expectations upon which it was based. In my judgment it is clear that the Government will be best protected by the reasonable extension of time, and by funding the whole remaining debt and interest in obligations of fixed amounts and maturity.

In the report for 1884 the Commissioner shows to the credit of the Central Pacific, uninvested, \$2,020,909.13.

He says:

More than one-fourth of the sum now in the sinking fund is uninvested, because, under the law, this fund can only be invested in Government bonds, which charge high premium and pay low interest.

If larger discretion were allowed the Secretary of the Treasury, the whole fund might be invested and at a higher rate of interest.

In the seven years since 1878, only the sum of \$8,560,807.60 has been paid into the sinking fund, which has produced in interest but \$437,524.03. *This proves that the law of 1878 cannot accomplish the object intended.*

In the Report for 1886, p. 34, the Commissioner shows—

That there had been invested by the Secretary of the Treasury	
in the sinking fund for the Central Pacific, . . . . .	\$2,599,800 00
That there had been redeemed of three per cents, . . . . .	1,761,800 00
<hr/>	
Leaving present principal, . . . . .	\$838,000 00
Premium paid, . . . . .	218,963 73
<hr/>	
Total cost, . . . . .	\$1,056,963 73

which left a loss of a premium of about 25 per cent. on \$838,000 of bonds.

That there remained in the United States Treasury uninvested on June 30, 1886, to the credit of the Central Pacific, \$2,182,339.56.

He says, p. 36 :

In my previous reports it is remarked that the condition of the sinking fund shows the law of 1878 is inadequate to the object for which it was adopted, that of producing a sum sufficient to pay the debts that will be due to the United States from the aided Railroad Companies.

The following statement proves conclusively that all existing laws for that object are utterly insufficient, and that additional and judicious legislation will be necessary to enable those Companies to discharge their obligations :

The total amount of interest paid by the United	
States on account of the subsidy bonds up to	
June 30, 1886, . . . . .	\$70,854,325 62
There had been retained by the	
Treasury Department and cred-	
ited to interest account, . . . . .	\$21,091,383 32
Sinking Fund account, . . . . .	9,658,713 10
<hr/>	
Total, . . . . .	30,750,096 42
<hr/>	
Excess of interest paid, . . . . .	\$40,104,229 20

The report of the Commissioner, dated September 13, 1887, page 19, shows that there remained in the Treasury, uninvested, on December 31st, 1886, to the credit of the Central Pacific, \$2,345,984.21.

There probably never has been so obtuse, unjust and unintelligent a mode of caring for the property of a debtor as that exhibited in carrying out the terms of this Thurman Bill. The responsibility of providing for the Company's indebtedness has

been assumed by the Government. It rejected every plan which the Company proposed. If any of the suggestions made by the Company had received favorable consideration, the amount now to be applied to the payment of its indebtedness would have been increased by at least 33 per cent., without reference to the proposed payment, by returning the lands donated, and this loss has been incurred by the improvident manner in which Congress and the Treasury officials have managed this sinking fund.

It cannot be charged that the Companies are in any way negligent in the matter of providing for this emergency. In February, 1875, Mr. Sidney Dillon, of the Union Pacific Railway, and Mr. Huntington, for the Central Pacific, joined in a letter to the Secretary of the Treasury, pointing out, that from the small amount earned from Government transportation, in comparison with the amount anticipated, and the anticipated decrease in receipts from the completion of rival lines aided by the Government, the Companies would be unable to meet the indebtedness at maturity, unless by some wise provision of law. This communication was duly referred to Congress, but for years no action was taken upon it.

The Companies offered to transfer back their unsold lands at a fair valuation, as part payment of the debt, and to set aside, from the net earnings, a fixed sum semi-annually, to continue until the debt was discharged.

In the 44th Congress, 1st Session, on April 3, 1876, a bill was introduced in the Senate (S. B. 687) which provided that "the lands granted to the Company in Nevada and Utah should be returned to the United States, at the rate charged by the Government for adjoining lands, and the amount so realized should be carried to the credit of a sinking fund in the United States Treasury. To the same fund the Secretary of the Treasury was authorized to carry the amount due and to become due the Company for transportation of mails, troops, supplies, &c., up to December 31, 1875, which, if not amounting to \$1,000,000, was to be made up to that sum by the Company. To the same fund the Company would pay, on the 1st days of April and October in each year, such a sum as, with the interest thereon, would be sufficient, when added to the other sums credited to the sinking fund, to pay off and extinguish the Government bonds advanced, with six per centum interest thereon. \* \* \* Interest on all sums

placed to the credit of the sinking fund to be credited and added thereto, at the rate of six per cent. per annum."

A similar bill (H. R. 3,138) was introduced in the House on April 17, 1876, on behalf of the Union Pacific. Congress declined to accept these propositions for the settlement of the debt.

On the day of the introduction of the Senate bill, Mr. Huntington, as Vice-President of the Central Pacific Railroad Company, addressed a letter to the Hon. George F. Edmunds, Senator from Vermont, in relation to its provisions. This letter was referred to the Committee on Railroads, and ordered to be printed to accompany Senate Bill 687.

On May 15, 1876, Mr. Huntington, as such Vice-President, answering a communication received from the Hon. J. Proctor Knott, (now Governor of the State of Kentucky,) but then Chairman of the Committee on Judiciary of the House of Representatives, requesting the Central Pacific to lay before the Committee such proposition as would be agreed to by that Company as to the creation of a sinking fund to meet the principal and interest of the bonds advanced by the Government, gave his views at some length as to the relations between that Company and the Government, and although the financial position of the Central Pacific has since that date been so much altered, yet that letter so well expresses the various transactions between the Company and the Government prior to the passage of the Thurman Bill, that it may be advantageously referred to by those wishing to understand the true position of the parties. This letter was appended to the Report presented by Mr. Hurd, of the Committee on the Judiciary, May 24, 1876, on resolutions relating to the Pacific Railroad Companies, and was ordered by the House of Representatives to be printed. (44th Congress, 1st Session, Report 440, Part 2.)

It would seem that all efforts of the Company to come to any understanding with Congress as to the mode and manner of establishing a sinking fund, or the extent of that fund, were futile, and therefore, as the Commission have seen from the minute book of the Central Pacific, its Board of Directors, on January 30, 1878, adopted a report submitted by its President, and passed resolutions establishing a sinking fund in the treasury of the Company which would positively provide for the payment of the entire debt due the United States.

The Act of May 7, 1878, provides, that the whole payment for services performed for the Government by the Companies shall be retained, and, in addition thereto, so much as, with the *half*-transportation and the five per cent. required by the original Acts, shall, with the amount added by the amendment, make together twenty-five per cent. of the net earnings. It also provides, that *half* the transportation and five per cent. of the net earnings shall be applied, as provided in the original Act, as a payment on the bonds and interest; and the remainder shall be placed in a sinking fund, under the direction of the Secretary of the Treasury, to be invested at interest, and to be used at the maturity of the bonds to pay prior liens.

The Companies have paid into the Treasury all that has been claimed under the Act. In fact, the Central Pacific has paid more than its letter required. Mr. Miller, its Secretary, said he has conceded the claims made by the accounting officers of the Government even when they were beyond the liability of the Company, because he supposed that all such payments would be at once deducted from the debt due the Government; or that when they were covered into the treasury, the interest on a similar amount would cease.

It is extremely inequitable that such payments were not so dealt with. But the calculations which were made by Mr. Thurman and his supporters are found to fall far short of the requirements of the case. The twenty-five per cent. of the net earnings is found to be inadequate to meet the accruing interest, so that, were the roads to run for one hundred years, the debt would increase for the whole period, by the addition to the principal of a portion of each year's interest. Owing to the construction of the other trans-continental roads affecting the earnings of the aided roads, the requirements under the "Thurman Act" have been steadily decreasing, and this Act must now be admitted to have failed in its purpose of providing for the debt.

No doubt the supporters of this bill thought the funds could be invested at about the same rate of interest borne by the subsidy bonds, but by the fortunate growth of the financial strength of the Government, the bonds bearing a high rate of interest were called and refunded at lower rates, leaving outstanding only the Pacific Railroad bonds or currency sixes,

bearing so high a rate of interest as six per cent. This has saved millions to the public treasury, but it has effected a loss to the Railroad Companies amounting to more than all the interest on the sums paid by them into the sinking fund.

Against the ruinous rate of thirty-five per cent. premium the Central Pacific protested, and, as a result of such protest, it appears that there is now a large amount of cash which, with its accumulations from payments by the Company and transportation charges withheld, is allowed to lie idle. The bonds purchased must remain in the fund until their maturity, when they will, of course, be worth only their face. The premium paid is therefore a complete loss to the Companies.

The low rate of interest at which the Government can borrow is a disadvantage to the Companies, because of the high rate of premium on that class of bonds which the Secretary of the Treasury is authorized to invest in. These Pacific Railroad bonds should be treated by the Government as its other bonds. They should have been exchanged for three per cents; and the saving to the Pacific Railroads for the fifteen years, from 1883 to 1898, would have amounted to twenty-nine millions of dollars, or forty-five per cent. of the total amount of the bonds.

It has been said that the Government did not reserve the right to call these bonds. That is hardly a valid excuse, as the same legislative power which sufficed to pass the "*Thurman Bill*," denounced by Mr. Justice Bradley as "*a blow at the public credit*," and as "*an assertion of the principle that might makes right*," and as "*sapping the foundations of public morality*," would have been equally effective to have retired these bonds by the issue of others bearing the same interest that the Government is paying on its other indebtedness.

In addition to the amount in the sinking funds in the United States Treasury, the several Pacific Railroad Companies have paid to the Government, under the terms of the Act of Congress of 1864, by payments retained for one-half of the transportation services performed and five per cent. of the net earnings to June 30, 1885, the sum of \$20,412,193.92.

The interest accruing on the Pacific Railroad bonds is a formidable item in the account between the Companies and the United States. The principal could easily be provided for but

the interest swells the amount beyond the earning power of the bonded portion of the roads.

For instance, the net earnings of the bonded line of 860 miles of the Central Pacific in 1884, ascertained by the provisions of the Thurman Bill, were \$1,212,526.45, while the interest for the same time on the United States bonds amounted to \$1,671,340.80. (See Report United States Commissioner of Railroads, 1885, p. 20.) And the difference is widening each year. The net earnings, computed in the same way for 1885, were only \$863,548.97. (See Report of Commissioner for 1886, p. 27.) If these bonds had not, by an apparent oversight of the Treasury Department, been debarred from calling and refunding at a lower rate, there would have been a saving in interest to the Pacific Railroad Companies of about \$20,000,000.

The difficulty of settlement between the railroads and the Government is constantly increasing, as it seems the present rate of payment does not provide for the interest. The Commissioner of Railroads states, that should the present sinking fund method be continued, the approximate result would be, that at the maturity of the bonds the balance due the United States by the Central Pacific would amount to \$71,000,000.

## XV.

### THE INDEBTEDNESS OF THE CENTRAL PACIFIC TO THE UNITED STATES.

We will first consider the question of indebtedness from the standpoint necessarily assumed by the accounting officers of the Government, without reference to the equitable rights of the Central Pacific which are recognized by Congress in the passage of the Act of March 3, 1887.

It would seem, from the annual reports made by the Commissioner of Railroads to the Department of the Interior, that if the requirements of the Thurman Act are complied with, and the net earnings of the Central Pacific do not materially decrease, that, at the time the Government bonds mature, (averaging nearly twelve years from this date,) the Central and Western Pacific Railroad Companies will be indebted to the Government, for principal and interest, over and above the amount deposited in

the Treasury to the credit of those Companies, somewhere between forty-five and fifty millions of dollars; but in view of the fierce competition for through business, it would probably largely exceed that sum. The lien claimed by the United States as security for this indebtedness is on the aided road, and the equipment thereon, and the telegraph line from Ogden, in Utah, to San José, in California, a distance of about  $860\frac{6}{100}$  miles.

The prior lien upon this property, assuming the interest is promptly paid in the next twelve years, is \$27,853,000. The amount of this prior lien represents to-day the full value of the aided road as measured by the present cost of labor and material. With the present experience, improvements of tools and appliances required for construction, it could be built for this amount. Therefore, not considering at this moment the changed relations between the Company and the Government caused by the Act of March 3, 1887, it would seem to be important for the debtor and the creditor to consider what is the best mode of meeting this indebtedness, unless the Government desires to have the property surrendered to it at the maturity of the bonds, subject to the prior lien.

The Commissioner of Railroads has, in several of his annual reports, recommended that the entire indebtedness of principal and interest be capitalized, and that the ascertained amount be divided into one hundred semi-annual installments.

He says, in his report for 1883, page 15 :

Should the decrease in the earnings of the aided lines continue to even an approximate proportion to the decrease of the last year, it will be readily perceived that the 25 per cent. of net earnings, to which the Government is entitled, would be so reduced as to render this increase inadequate as related to the vast magnitude of the debt.

At the rate provided for in the Thurman Act it would require a century or more to accumulate a fund sufficient to discharge this debt, and with strong probability that by this method it cannot be done. Nor would it be practicable to increase the percentage without manifest detriment as well to the Companies as to their patrons. The payment, by whatever mode it be collected, must come from the earnings of the road. If the rates be too high, the burden falls with onerous weight upon the business, and would work directly in the interest of non-aided competing lines.

It would seem to be of less consequence, whether the debt be paid in fifty or sixty, or even a hundred years, if its ultimate payment be absolutely assured, than that oppressive burdens be imposed upon the commerce be-

tween the Atlantic and Pacific coasts. A proper net compensation must remain to the owners of the roads, if they are to receive the watchful care and necessary maintenance which safety and success demand.

The construction of these roads has been pronounced by the Supreme Court of the United States to have been a national necessity so urgent as to admit of no delay, and confessedly involving the integrity of the Union. The energy with which they were built is well illustrated in the fact that they were completed in seven years less time than the limit established by law, and at a time when the Currency bonds issued to the Companies realized an average of only about 75 per cent. in gold. And they must be repaid at par.

It was doubtless expected that the compensation for Government transportation would equal the current interest; that it has not, has been a disappointment as well to the Companies as to the Government, but had the charges for transportation continued at the rate prior to their construction it would greatly have exceeded the interest.

It will be seen that the Commissioner takes the same view as we expressed in a previous chapter on the working of the Thurman Act.

The Companies have performed for the Government a much larger volume of business than was required in the years preceding the construction of the road; but charging to the Government on a part of the transportation only the same rate as charged to private parties for like service, the compensation is from one-eighth to one-tenth of the amount the Government paid for similar service prior to such construction; but in the carriage of mails the Government has fixed an arbitrary rate, which is less than rates paid by other patrons of the road, and less than the service is fairly worth.

But various causes have arisen why the indebtedness resulting from the loan of the Government bonds should not now be demanded of the Central Pacific, and Congress, with a view of determining the equities that exist in favor of the Company, has directed the Commissioners appointed under the Act of March 3, 1887, to ascertain—

The average cost per annum of Government transportation in the region now traversed by the Pacific Railroads between the year 1850 and the completion of said roads.

The average cost per annum since such completion.

Whether or not the Pacific Railroad was completed in less time than was allowed by law, and if so, how much less time, and if the United States was benefited thereby.

The answer to these three sources of inquiry are contained in the testimony of Leland Stanford, and in the Exhibits appended to his answer, prepared by E. H. Miller, Jr., Secretary of the Central Pacific; and are fortified by copious extracts from the records of the War and Post Office Departments to attest their correctness.

The contract between the United States and the Pacific Railroad Companies required that the roads should be completed by the 1st of July, 1876, and the testimony of Leland Stanford and Mr. Miller show they were completed on the 10th day of May, 1869.

That the United States were benefited in money by such early completion in the sum of \$47,763,178, which is explained as follows:

SEVEN YEARS TO JUNE 30, 1876.

TRAFFIC.	U. S. Transportation Charges on Central Union Pacific.	Cost to U. S. at rates paid prior to Railroads.	Saving to U. S. to June 30, 1876.
Freight,.....	\$1,793,556	\$15,509,977	\$13,716,421
Troops, etc.,.....	2,162,296	18,698,671	16,536,375
Mails,.....	3,689,343	21,199,725	17,510,382
Total, .....	\$7,645,195	\$55,408,373	\$47,763,178

Of this sum so saved, the proportion of the Central Pacific is \$21,971,062.

That the difference between the cost of Government transportation in the region now traversed by the Pacific Railroad between the year 1850 and the completion of said road, and

The average cost per annum since such completion

result in a saving to the United States of . . \$139,347,741 25 which is more fully explained by the subjoined table:

TRAFFIC.	U. S. Transportation Charges on Central Union Pacific.	Cost at rates paid prior to Railroads.	Saving to U. S.
Freight,.....	\$5,740,753 00	\$61,161,307 00	\$55,420,554 00
Troops, etc.,.....	4,616,053 00	49,178,967 00	44,562,914 00
Mails, .....	10,606,507 00	49,970,780 47	39,364,273 25
Total, .....	\$20,963,313 22	\$160,311,054 47	\$139,347,741 25

Well might the Commissioner of Railroads, in his report for 1883, say :

*The saving to the Government has greatly exceeded the current interest it has paid.*

And he might have added, and the principal sum it will hereafter have to pay.

We can better show the equitable rights of the Central Pacific by stating an account between it and the United States, as of the 1st day of July, 1876, the day on which the contract required the Pacific Railroad to be completed. It would be more equitable to the Company to state it annually after the completion of the road, but the following is most favorable to the Government :

The bonds issued to the Central Pacific amounted to	\$25,885,120
“ “ “ Western Pacific “ “	1,970,560
	<hr/>
	\$27,885,680
Interest accrued, less credits to July 1, 1876, as shown	
in the Public Debt statement of June 30, 1876, .	12,180,833
	<hr/>
	\$40,066,518
Deduct Central Pacific proportion of the sum of	
\$47,763,178, saved to the United States between	
May 10, 1869, and July 1, 1876, say 46 per cent.,	21,971,062
	<hr/>
Would leave due to the United States, for principal	
and interest, July 1, 1876, . . . . .	\$18,095,456

If the Central Pacific proportion of the saving to the United States, prior to the 1st day of July, 1876, was the only deduction to be offset against the claim of the Government, then the annual interest to be thereafter charged against the Company would be only \$1,085,727.36, instead of \$1,553,107.20, now annually booked against it, and the lesser sum would have been annually cleared by the Government transportation, and the payments under the Thurman Bill ; but the Company is entitled to other deductions.

If the above account had been stated, with annual deductions of the amount saved by the Government, the balance due to it, for principal and interest, on July 1, 1876, would be \$13,583,887.

There is another branch of inquiry which Congress has directed the Commissioners to pursue :

What discount the Pacific Railroad and its several branches were forced to make, in disposing of the bonds guaranteed by the Government, to obtain the gold coin which was the currency of the country through which the greater part of said roads pass.

Governor Stanford states the loss by discount at	\$7,120,073 55
And shows that the interest charged to the Company by the United States, on this discount, would amount at the maturity of the bonds to	12,816,132 39

Making a total loss to the Company, if it was required to pay the principal and interest of the Government bonds, of . . . . .	\$19,936,205 94
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But the loss to the Central Pacific is double that stated by Governor Stanford; for the same causes that induced the sale of the aid-bonds forced the Company to realize on its own bonds, secured by the first mortgage; and as the latter did not realize any greater net price, the loss is double the amount stated above.

If it is to be assumed that Congress directed this information to be obtained for a practical end, and that it intended to reimburse the Central Pacific for the loss it had sustained in meeting the demand of the Government for the undue haste with which the road was constructed, then the proper mode of stating the account to July 1, 1887, would be as follows:

Bonds issued to the Central and Western Pacific, . . . . .	\$27,885,680
Loss suffered by discount, . . . . .	7,120,073
Total, . . . . .	\$20,765,607
Interest on this sum, 6 per cent., less credits to July 1, 1876, . . . . .	8,688,772
	\$29,454,379
Deduct Central Pacific proportion of the sum of \$47,763,178 saved to the United States, between May 10, 1869, and July 1, 1876, say 46 per cent., . . . . .	21,971,062
Would leave due to the United States, principal and interest, July 1, 1876, . . . . .	\$7,483,317

By this mode of stating the account, the annual interest charge would be \$448,899, instead of \$1,553,107.20, a difference of \$1,104,208.20, and would have entailed only such burden as could have been lifted by the charge for the public transportation.

But whichever mode is adopted of stating the amount to July 1, 1876, whether the balance of principal and interest then due is \$18,059,456 or \$7,483,317, makes little difference in the result, so far as the indebtedness growing out of the advance of bonds is concerned; for if we take the larger sum, . . . . \$18,095,456. And add the interest, at 6 per cent., to January 1,

1886, . . . . .	10,324,099
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The balance due the United States, for principal and interest, on January 1, 1886, would be . . . .	\$28,419,555
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But at this date we show a saving to the United States, by the construction of the Union and Central roads of \$139,347,741

Less the amount of saving, shown between May 16, 1869, and July 1,

1876, . . . . .	47,763,178
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\$91,584,563
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The Central Pacific's proportion, 46 per cent., is \$42,128,898

Add to this the result of the further inquiry with which the Commission is charged.

If the United States, since the Union and Central Pacific Railroad Companies accepted the terms proposed by Congress for the construction of the Pacific Railroads, has granted aid in lands for building competing parallel railroads to said Pacific Railroad, and if so, how many such roads, and to what extent such competing lines have impaired the earning capacity of the Pacific Railroad?

The answer of Governor Stanford, supported by the Exhibit furnished by Mr. Stubbs, the General Traffic Manager of the Central Pacific, shows there are now eight trans-continental railroad lines in addition to the Union and Central, each of which competes, in whole or in part, with the Union and Central for the traffic between the Pacific and the territory east of the Rocky

Mountains. All of these, except the Canadian Pacific, are in United States territory, and were aided by the grant of lands, as may be seen in the report of the Commissioner of Railroads for 1884, pages 226, 227.

Mr. Stubbs estimates that the loss resulting to the Union and Central by the diversion of traffic to the aided roads was \$37,132,351.02, of which the Central Pacific's proportion is 46 per cent., \$17,080,881.47.

A further question, which Congress have required the Commissioners to answer, is—

If the United States have contracts with branch roads, controlled by either of the Pacific roads, for carrying United States mails, and if so, what service has been performed by them, and what money, if any, has been paid for such service, and what remains due and unpaid?

The evidence, given to the Commissioner, shows that unaided roads, under the control of the Central Pacific, have performed service for the United States; that the right of the Central Pacific to collect for such service from the United States has been adjudicated by the final judgment of the Supreme Court, but that the United States has neglected and refused to pay, and that there is now due for such service about the sum of \$2,000,000.

The Senators and Representatives who voted for the Act of Congress of 1862 and the Amendment of 1864 estimated, that before the maturity of the bonds the United States would benefit by the transportation performed by the Pacific Railroad to the full amount of the bonds and interest. Mr. Howard, the Chairman of the Senate Committee on Pacific Railroads, predicted that the public transportation, with the five per cent. reserved to the Government, would pay the bonds and interest years before their maturity. Mr. Howard prophesied truly, for the figures show, that by its saving on transportation the Government had, at the beginning of the year 1883, been made whole on the principal of the bonds and the accrued interest; while, on the 1st day of January, 1886, the bonds advanced to the Union, Central and Western Pacific, and the accrued interest thereon, amounted to \$113,434,675.42; and between that sum and the amount saved at that date, as heretofore shown, the balance in favor of the Government was \$25,913,065.83. And this balance does not include the transportation performed, or the moneys paid into the Treasury as five per

cent. on the net earnings between July 1, 1876, and December 30, 1885, or any payments made under the requirements of the Thurman Act.

Mr. Miller has made an interesting calculation, which shows that the entire saving to the Government at the maturity of the bonds would be . . . . .	\$259,040,430
That the balance then due by the Union and Central, less credits for services and payments, would be . . . . .	104,397,370
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Surplus saved, . . . . .	\$154,643,060
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Or, stating the entire debt, with interest at maturity, without any deductions for payments or services by the Companies, as—

Principal of bonds, . . . . .	\$55,092,192
Interest at 6 per cent., . . . . .	99,165,945
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	\$154,258,137
	<hr/>
Which deducted from total sum leaves . . . . .	\$104,782,293

A net saving of which would have been realized by the Government, in excess of the whole amount of bonds and interest, had the bonds been a donation, instead of a loan, to be repaid with interest.

Governor Stanford, as President of the Central Pacific, has addressed to the United States Pacific Railway Commission, in answer to its request for such suggestions as he desired to make, his views of the situation, in the following language :

I desire to suggest that the Commission report in favor of the appointment of a proper Court to consider the equities existing between the Government and the Central Pacific Railroad Company, as inquired into in accordance with the Act of Congress, approved March 3, 1887, and render final judgment thereon. Then the question, what further legislation may be needed, can be fairly considered. I consider that the Act of Congress directing inquiry into the equities erects a different standard by which to measure the relations between the Railroad Company and the Government from the purely legal relation theretofore existing.

Such a report from the Commission, and the probable action suggested by Governor Stanford, would appear to be the logical consequence of the inquiries which Congress directed the Commissioners to make, and of the information elicited by such inquiry. There is no hardship whatever resulting to the financial situation of the Government by following the course suggested by Governor Stanford, or in giving effect to those manifest equities which clearly arise from the information that has been obtained; to disregard the equitable considerations, which, it is shown, the Railroad Company is entitled to, and should have the benefit of, would be to inflict gross and manifest hardship and injustice upon it.

It would be the height of injustice to compel this corporation to pay to the Government the face value of its bonds, and interest thereon at the rate of six per cent. per annum, in view of the fact that the Company did not realize such face value by an amount exceeding \$7,120,000; and that such difference, with the interest up to the time of the maturity of the bonds, will amount to about \$20,000,000.

The Government spurred the Company to make this loss. It insisted on closing the gap between the western end of the Union Pacific and the eastern end of the Central Pacific as speedily as possible. To accomplish this result the Central Pacific was forced to sell the Government bonds for the best price obtainable, and it should not be held to sustain the loss.

To give effect to this desire of the Government for the early completion of the road, the Central Pacific spent \$25,000,000 more than would have been required if the road had not been built with such haste. The Government had the use of the road more than seven years before the time specified in the contract; and during such seven years, ending June 30, 1876, it saved \$47,763,178; the Central Pacific's portion of which is \$21,971,062. Now, is there any valid reason why, at the end of these seven years, when the saving to the Government was ascertained, the account should not be justly and equitably stated between the Company and the Government. Is it not fair and equitable that it should be? So far as the facilities furnished by the Central Pacific were concerned, the Government had saved by their seven years' use nearly \$22,000,000.

It had cost that Company about \$32,000,000 to complete its

road so as to give the Government the opportunity for such saving.

The money which at the end of the seven years was ascertained to be saved should have been then deducted from the face of the bonds, and the accrued interest; and the Company should thereafter have been charged interest only on the balance.

Of course, we well understand that it was not any pecuniary consideration that induced the Government to insist on the early completion of the road. Every principle of good government and statesmanship required that it make this demand. We have heretofore shown on how loose a thread hung the Government's title to its Pacific possessions. There were various matters of foreign policy that might have led to war, the seat of which would more than likely have been on the Pacific Coast, and until the gap between these railroads was closed, there was always an element of great danger if such contingency arose.

The public interest absolutely demanded that this highway for the movement of troops and munitions of war should be completed as soon as might be.

Is it right that the burden of complying with this demand and securing the integrity of a valuable portion of this Republic should fall upon these Railroad Companies? And more especially when, in about sixteen years after the completion of the work, the Government had been reimbursed for all it had paid or could be called upon to pay, caused by the issue of its bonds in aid of the building of these roads.

This matter should be judged by the same rules of equity as a Court would apply to a transaction between citizens. If one hires another to erect a building, and by the contract a specified time is given to the builder to complete it; but the owner comes and says, "Since I made that contract I find my necessities require that I should have that structure just as speedily as is possible, and I desire that you will complete it as early as you can, having no regard to cost of material or price of labor." If the contractor met the wishes of the owner, would he not be entitled to an increased sum beyond the price mentioned in the contract, and which was based upon such length of time to do the work as would enable him to accomplish it with economy and with profit to himself? In such a case, the Chancellor would, among other things, inquire as to the value of the rents, income or profits of the

building during the time the owner enjoyed it previous to the contract date, and the result would influence his decree. Should not the same rule prevail in estimating the amount that should be allowed by the United States to the Companies?

Now, in the case of the Central Pacific; it is beyond doubt the promoters of that road would have saved a large portion of the assets at their command, and have had much less fixed charges on the earnings, if they had been permitted to occupy the fourteen years allowed by the contract; but, instead of that, they spent all those assets, and thereby increased their fixed charges, to anticipate the time set for opening the road, and came out several millions of dollars in debt.

\* \* \* \* \*

By giving effect to the information which Congress now has in response to the inquiries directed by the Act of March 3, 1887, and in providing for the tribunal suggested by Governor Stanford to settle the accounts between the Companies and the Government, the true intent and spirit of the Act of 1862, and the amendment of 1864, will be effectually and equitably carried out.

The intent was, that the Government should be reimbursed for the principal and interest of the bonds loaned by the services of the Companies, and five per cent. upon the net earnings; it has received such consideration in heaping measure, complete and running over. For the services rendered to it by these roads it has kept within its treasury more than the principal and interest of the bonds constituting its loan to these Companies.

It is a maxim of equity often used in illustration, "that you cannot eat your cake and have it;" but that is the position in which partisan advisers have placed the Government by their ill-considered counsel.

The Central Pacific have already paid the Government in services and money about \$11,000,000; but, in addition to this and the payments made by the Union Pacific; at the time of the maturity of these bonds, say in 1898, the Government will have benefited in money by the building of the roads of these Companies nearly \$105,000,000.

That the amount is not larger is due to the oversight of the Treasury officials. The bonds issued in aid of these roads could not be used as a deposit for national banking purposes; and they were not made redeemable before maturity, at the option of the

Government; a provision which was a marked feature in all the other loans issued at about the same period. If these bonds could have been called ten years after their issuance, the rate of interest would have been reduced from six per cent. to three, and the accounts between the Companies and the Government would have presented a different showing than they now do.

The benefits mentioned above that will accrue to the Government at the maturity of the bonds represent only the money saved on the business actually transported over the Union and Central Pacific roads between the Missouri River and San Francisco; but in this nothing is figured for the decreased estimates of the army caused by the building of these roads. We have heretofore cited the language of General Grant and of General Sherman on this subject, and we now add the testimony of President Garfield at the time he was a member of the House of Representatives.

In the Fortieth Congress, Second Session, Mr. Garfield, from the Committee on Military Affairs, House of Representatives, made the following report:

The Committee on Military Affairs, to whom was referred a letter from the Secretary of War, enclosing a letter of Lieutenant-General Sherman, dated March 4, 1868, recommending Government aid to extend the Union Pacific Railway, Eastern Division, as a "military necessity," and a measure of public economy, beg leave to report:

That they have carefully considered the statements therein made, and have found them confirmed by the following facts, drawn from official record:

The cost to the Government for transportation on the Union Pacific Railway, Eastern Division, in 1867 was . . . .		\$511,908 24
If the military supplies had been wagoned, and the mails carried by stage, and the troops marched, (taking the average rates at which the Government made its transportation contracts for that year, as shown by certificates of the Departments of the Quartermaster-General and Postmaster-General,) the cost would have been . . . .		1,358,291 06
Saving to the Government in 1867, . . . .		\$846,382 82
* * * * *		

But there is another consideration of economy in the public expenditure as the result of constructing the road. Lieutenant-General Sherman has testified that one-half of the military force in New-Mexico could be dispensed with if the road was constructed, owing to the greater mobility of

the remainder, and the growth of self-protecting settlements on the line of the road. As his estimate of the cost of maintaining the two regiments of infantry and one of cavalry was about four millions of dollars a year, the Committee find that an additional saving to the Government of two millions annually would thus be effected by the road. This saving, added to the saving in the transportation of the diminished military force that would be left in New-Mexico, and of the supplies to maintain them, including the carriage of the mails and Indian goods and supplies, would, *in less than six years*, reimburse the entire loan necessary to extend the road from its present terminus to the Rio Grande. The Committee have had satisfactory evidence presented to them, that west of Albuquerque, and through Arizona and Lower California, the same or even larger proportionate economy in the public service would be effected by the substitution of railway for wagon transportation, with the result of an equally certain payment of the interest and extinction of the principal of the Government aid long prior to its maturity.

The Committee have also had before them the written recommendation of Major Philip H. Sheridan, that the Government at once continue its aid to the Kansas Pacific Railway, in the course of which he says : " It almost " substantially ends our Indian troubles, by the moral effect which it exercises over the Indians, and the facility which it gives to the military in " controlling them. \* \* \* \* No one, unless he has personally visited " this country, can appreciate the great assistance which this road gives to " economy, security and effectiveness in the administration of military affairs " in this Department."

As we have before stated, in the year 1864, when the Central Pacific was completed to Newcastle, and in the year 1865, when the Union Pacific commenced construction, the Quartermaster's Department spent \$28,374,228 for military service against the Indians ; these two years being a portion of the thirty-seven years in which Indian wars cost the nation twenty thousand lives and more than \$750,000,000 ; nor is anything reckoned for the saving to the Government on account of the altered or more peaceable disposition of the Mormons in Utah.

It would be difficult to bring to a financial standpoint all the benefits which the United States have derived from the building of these roads ; by their construction the people have been advanced in civilization, in comfort and in safety to their persons and property ; and its benefit to the nation as a military necessity, both of offence and defence, cannot well be estimated either politically or financially.

It remains now to be seen, whether the Government will avail itself of the information which its Commission has collected, in

answer to the inquiries directed by Congress, and will proceed to settle with the Central Pacific Railroad Company on the basis of the equities which such information discloses. Such a course would settle this controversy in a manner befitting the dignity of a nation that has received so much benefit from the contract it made with the Central Pacific Railroad Company.

If, however, disregarding that which appears from all the facts and circumstances of the case to be its plain duty in the premises, it shall use its power to scrape into its treasury other benefits and other moneys, beyond what it has already received, it will spend a century or more in oppressing and despoiling the inhabitants of that arid and elevated territory lying between the Rocky Mountains and the Sierra Nevadas, and in levying tribute on the potatoes grown in the alkali lands of Nevada, on the wild hay saved from the river banks of the Humboldt, and from cattle that derive a precarious subsistence from the sage brush on the line of the Central Pacific; for the completion of the seven lines other than the Union and Central aided by the Government, and of the Canadian Pacific, effectually prevents any profit being derived by the Central from its through or overland traffic.

The Central Pacific Railroad Company present this statement as truthfully showing the history of its relations with the Government, and proving that it has faithfully performed its part of the contract, and has grievously suffered by the persistent disregard of their obligations by the United States.

It now seeks the equitable settlement which the evidence taken by the "Commission," as directed by Congress, shows to be its right, and asks that it be made without delay.

ROSCOE CONKLING,  
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*Of Counsel.*







